

Version 3.6 – 31/08/2018

Green Star Certification Agreement

GREEN BUILDING COUNCIL OF AUSTRALIA CERTIFICATION AGREEMENT

This Certification Agreement (**Agreement**) is entered into by the Applicant (as defined below) and the Green Building Council of Australia (**GBCA**), a non-profit company taken to be registered in the Australian Capital Territory of Level 31, International Towers, Tower Two, 200 Barangaroo Avenue, Barangaroo NSW 2000, and constitutes a binding agreement between the Applicant, on the one hand, and GBCA, on the other hand.

The term **Applicant** refers to the individuals or entities that hold all legal right to possess and control the real and personal property associated with the Project (defined below). The Applicant is specified in the Registration (defined below). The Agreement may be implemented by a third party such as an architect, property manager or consultant who has been appointed to act on the Applicant's behalf.

If an Agent is entering into this Agreement on the Applicant's behalf, the Applicant represents and warrants that it has completed a Confirmation of Agent's Authority (defined below) and provided it to GBCA on Registration.

By accepting this Agreement the Applicant acknowledges that it is fully aware of and agrees to all of the following terms, conditions, and provisions, and the Applicant represents that it has had the opportunity to consult with a lawyer about its rights and obligations under this Agreement, and the Applicant is entering into a legally binding Agreement.

RECITALS

- A.** The purpose of this Agreement is to establish the terms and conditions of the GBCA Green Star Certification Process (**Process**) to which the Applicant (and the Applicant's Agent, if any) are bound.
- B.** The Green Star Rating Tools have been developed by the GBCA to evaluate the design, construction and operation of sustainable buildings, fitouts and communities.
- C.** To earn a Certified Rating or Performance Rating under the Green Star Rating Tools, the Applicant must meet specified requirements as defined in the Submission Guidelines and a Certified Assessor must award Points to the Project to attain a Green Star Rating or Performance Rating.
- D.** The Applicant wishes to apply for a Certified Rating or Performance Rating of the Project against the Rating Tool, on the land and at the building address specified in the Registration.
- E.** The GBCA has agreed to commission one or more Certified Assessors to carry out an Independent Assessment of the Project against the criteria set out in the Submission Guidelines.

- F.** Subject to full compliance by the Applicant with its obligations under this Agreement, the Certified Assessor(s) will complete the Independent Assessment, and recommend the number of Points to be awarded to the Applicant. These Points will then be used to determine the Project's Green Star Rating or Performance Rating.
- G.** If the Applicant receives a Certified Rating or Performance Rating it will be entitled to a limited licence to use the Trade Mark and publicise its Certified Rating or Performance Rating.
- H.** This Agreement sets out the terms on which the certification will take place and the basis on which the Applicant may promote its Certified Rating or Performance Rating and use the Trade Mark and associated logos.

AGREEMENT INTERPRETATION

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;

“Agent” or **“Applicant Agent”** means any entity specified in the Registration for the Project and the subject of an executed Confirmation of Agent’s Authority.

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

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

“Certification Date” means the date of confirmation in writing by the GBCA to the Applicant that the Applicant has received a Certified Rating or Performance Rating (if any);

“Certified Assessor” means a person or persons, independent of the GBCA, nominated by the GBCA, knowledgeable and with experience in the green building industry, who has passed the “Green Star Accredited Professional” examination, and having undertaken appropriate and ongoing education;

“Certified Rating” means a rating of four to six stars that may be awarded by the GBCA under this Agreement, entitling the Applicant to a limited licence to use the Trade Mark and publicise the Applicant’s Certified Rating. This does not include the Green Star - Performance Rating (see Schedule 2);

“Certified Rating Certificate” means a certificate to be awarded to the Applicant by

the GBCA to provide confirmation of the Certified Rating being achieved;

“Change of Ownership Agreement” means an agreement of that name under which the Applicant transfers all rights under this Agreement to a Purchaser of the Project, the form of which is set out in Schedule 6, to be used according to clause 6.

“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;

“Confirmation of Agent’s Authority” means the agreement of that name under which the Applicant appoints the Agent to represent it, the form of which is set out in Schedule 5, to be used according to clause 20.5;

“Credit” means a measurable indicator, an attribute or initiative that improves, or has the potential to improve, a Project’s sustainability, design, or 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 Submission Guidelines;

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

“CTM” means a Certification Trade Mark under the *Trade Marks Act 1995* (Cth);

“Date of Practical Completion” means the date on which the Project reaches practical completion in its entirety;

“Design” includes, without limitation, all designs and plans relating to the Project;

“Design Review” means an independent assessment by a Certified Assessor of the Project prior to its practical completion against criteria contained in the Submission Guidelines which may result in the award of a Design Review Certified Rating available for Green Star Design & As Built and Green Star Interiors Projects;

“Dispute” means a dispute or difference between the parties arising out of or in connection with this Agreement;

“Fee” means:

- a) the Assessment Fee;
- b) fees payable by the Applicant for inquiries and Credit Interpretation Requests;

in each case being the amount in respect of the relevant fee specified by the GBCA on the Website from time to time; or in the case of Performance Ratings the Assessment Fee as determined by the GBCA on a case by case basis;

“GBCA Representative” means the GBCA employee/s designated by the GBCA to project manage an Independent Assessment;

“Green Star Project Manager” means the platform of that name located on the Website designed to allow registration and monitoring of Projects;

“Green Star Rating” means a Green Star rating of one to six stars under the Green Star Rating Tools except for Green Star – Performance (see Schedule 2);

“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 Project;

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

“Marketing Rules” is the defined term for the purposes of this Agreement to describe:

- a) the Marketing Rules and Style Guide for Green Star Projects as displayed on the Website to be used by Applicants in the promotion of the Certified Rating or Performance Rating and of Projects registered for a Green Star Rating; and
- b) the Certification Trade Mark Rules published by the GBCA on the Website,

each as applicable and amended from time to time;

“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 28 days after the date of issue of the Payment Claim by the GBCA, unless an earlier date is specified;

“Performance Rating” means the Green Star Rating of zero to six stars under the Green Star - Performance rating tool and specified in more detail in Schedule 2.

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

“Project” means the proposed building, refurbishment or extension, design, fitout, or community, existing operational building or Portfolio, as the case may be, specified in the Applicant’s Registration;

“Portfolio” means the Applicant’s portfolio of buildings specified in the Registration in respect of which the Applicant seeks both individual Performance Ratings and a Portfolio Rating;

“Portfolio Rating” means a Performance Rating for a Portfolio calculated by reference to the area weighted average of the buildings included in the Portfolio that have achieved Performance Ratings;

“Rating Tool” means the Green Star rating tool specified in the Registration details and includes without limitation all of the GBCA’s Confidential Information in such tool;

“Registration” means registration of a Project on the Website;

“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 the Applicant’s Registration accepting this Agreement and the Assessment Fee;

“Rights” has the meaning in clause 6;

“Services” means:

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

“Submission Guidelines” means the version of the relevant Green Star Rating Tool Submission Guidelines (known as Technical

Manuals in the Certification Trade Mark Rules) current at the date of execution of this Agreement, as varied from time to time;

“Tax Invoice” means an invoice in the format and with the content 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 Annexure A to this Agreement, including all four, five or six star variants and any unregistered or registered trade marks and any Certification Trade Marks used or applied for from time to time;

“Trade Mark Rules” means the CTM rules in respect of trade marks no. 1497148 and no. 1508439, and any other proposed or issued CTM rules lodged with the Trade Mark, as varied from time to time;

“Validity Period” means the period of validity of a Certified Rating or Performance Rating as set out in Schedule 1;

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

1.2 Interpretation Rules

These rules of interpretation apply to this Agreement:

- 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 subclause, 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;
- 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; and
- j) **(trustee company)**: To the extent that the Applicant is a trustee company, it may

have the benefit of Schedule 3 provided that the Applicant indicates its desire to benefit from Schedule 3 in the appropriate section of the Registration form.

1.3 Trade Mark Rules

- a) **(Trade Mark Rules)**: Use of the relevant trade mark is subject to the relevant Trade Mark Rules. In the event of conflict or inconsistency between the provisions of this Agreement in relation to the use of a trade mark, and the Trade Mark Rules, the provisions of the Rules will govern and prevail.
- b) **(Amendments)**: The Applicant will perform any action necessary to amend any conflicting provision of this Agreement upon request by GBCA.

INDEPENDENT ASSESSMENT PROCESS

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 Project and to provide the other Services as set out in this Agreement.
- b) **(Applicant's acceptance of Services):** The Applicant has registered the Project with the GBCA and has requested an Independent Assessment and agreed to pay the Fees.

2.2 Contractual Relationship

- a) **(Independent contractor):** Each of 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 obligations under this Agreement.
- b) **(Exclusions):** This Agreement will 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 will 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.

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 for each inquiry and Credit Interpretation Request made by the Applicant 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 must pay any Fee on or before the Payment Date.
- b) **(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.
- c) **(Rights Cumulative):** The Applicant acknowledges that withholding of the final results of the Independent Assessment pursuant to paragraph (b) 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).
- d) **(Method):** Any payment to be made by any party under this Agreement shall be made in cleared funds unless otherwise agreed between the parties in writing before the Payment Date.

4. INDEPENDENT ASSESSMENT

- a) **(Applicant's undertakings):** The Applicant agrees that:
 - (i) it will provide the Certified Assessor with all information specified in the Submission Guidelines and reasonably requested by the Certified Assessor in order to complete the Independent Assessment, including, in relation to the Performance Rating Tool, the material set out in Schedule 2;
 - (ii) subject to any reasonable occupational health and safety requirements of the Applicant, it will provide access to the Certified Assessor to the Project, upon not less than 3 days' notice by the GBCA

to the Applicant, for the purposes of collecting information to allow the Independent Assessment to be performed;

- (iii) the GBCA has the right to conduct audits of the Applicant's advice to its employees, consultants and contractors regarding the Applicant's commitment to this Agreement; and
 - (iv) it will comply with all the terms and conditions contained in the Submission Guidelines and any additional eligibility criteria or rulings relevant to the nominated Rating Tool specified on the Website at the date of this Agreement.
- b) **(GBCA's undertakings):** The GBCA agrees that following the Registration Date it will:
- (i) provide the Applicant with a summary of the documentation required for the Independent Assessment based on Submission Guidelines;
 - (ii) provide a GBCA Representative 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 (including non-payment of Fees), the GBCA will award the Applicant a Certified Rating evidenced by an email confirming the Certified Rating; and
 - (iv) use all reasonable endeavours to comply with the timeframes set out on the GBCA Website in relation to the 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 using the Green Star Project Manager, by email, 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 Submissions Guidelines 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 Submission Guidelines and any rulings on the Website for guidance and follow these;
 - (ii) if the Submission Guidelines do not adequately address the issue, then the Applicant may lodge a Credit Interpretation Request via the Green Star Project Manager;
 - (iii) each Credit Interpretation Request must be accompanied by payment of the relevant Fee;

- (iv) determination of the Credit Interpretation Request will be made by the Technical Advisory Panel 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 Fee.

6. TRANSFER OF RIGHTS IN THE PROJECT

6.1 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 Project and/or the Design ("**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 (the "**Purchaser**") of the Rights that the Purchaser acquires, subject to the obligations, under this Agreement by:
 - (i) the Applicant assigning or novating the relevant rights and obligations to the Purchaser by providing the GBCA with a duly executed Change of Ownership Agreement, 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 (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 (d) or (e) respectively, terminate this Agreement, and

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

6.2 Post Certification Transfers

In the event the GBCA has awarded a Green Star Rating and the Applicant has sold, transferred or otherwise disposed of its Rights, the Applicant must notify the GBCA of such disposition and take the following steps:

- a) provide the GBCA with a duly executed Change of Ownership Agreement; or
- b) provide the GBCA with such other form of legally binding consent from the Purchaser to be bound by this Agreement satisfactory to the GBCA in its reasonable discretion.

The Purchaser will be taken to be the Applicant under this Agreement from the date of such consent.

GREEN STAR IP AND PUBLICITY RIGHTS

7. LICENCE OF TRADE MARK

7.1 Applicability

This clause 7 only applies if the Applicant is awarded a Certified Rating by the GBCA.

7.2 Trade Mark licence

The GBCA grants to the Applicant for the duration of the Validity Period, a non-transferable, non-exclusive licence to use the Trade Mark showing the Certified Rating solely in relation to the Project and the display, promotion and advertisement of the Project, in accordance with the Marketing Rules.

7.3 Conditional-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.

7.4 Cessation of use of the 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 7.4(a), the Applicant must:

- (i) immediately cease any and all use of the Trade Mark;
- (ii) remove the Certified Rating Certificate (if any) from public display; and
- (iii) cease to promote or otherwise refer to the Certified Rating.

7.5 Applicant Responsibilities on Expiry of Trade Mark Licence or Termination of Agreement

Upon expiry of the Trade Mark licence under clause 7.2 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; and
- c) cease to promote or otherwise refer to the Certified Rating.

7.6 Prohibition on promotion by the Applicant if Certified Rating not achieved

The Applicant acknowledges that if the Applicant is not awarded a Green Star Rating of 4 stars or above, being a Certified Rating, the Applicant will not be granted a licence under clause 7.2 to use the Trade Mark and will be prohibited from promoting its Green Star Rating or Registration for Green Star Rating.

7.7 Valuable Rights

- a) The Trade Marks constitute valuable intellectual property held by GBCA and are protected by law. The Applicant acknowledges and agrees that any unauthorised use of the Trade Marks constitutes both infringement of GBCA's intellectual property and a breach of this Agreement.
- b) All rights not expressly granted under this Agreement are reserved by GBCA, and no

licence is granted for the use of the Trade Marks for any purpose beyond the uses set forth in this clause or use of any other intellectual property of GBCA. The Applicant acknowledges and affirms GBCA's ownership of the Trade Marks and their validity and enforceability, and will not engage in or support any action, claim or challenge that is inconsistent with this clause. All use of the Trade Marks and the goodwill associated with them shall inure to the sole benefit of GBCA.

- c) The Applicant acknowledges that the Trade Marks and the associated goodwill possess special, unique and extraordinary characteristics, which make difficult the assessment of monetary damages that GBCA would sustain as a result of unauthorised use of the Trade Marks. The Applicant recognises that GBCA would suffer irreparable injury by such unauthorised use and agrees that injunctive and other equitable relief is appropriate in the event of a breach by the Applicant of any of the terms of this clause. Such remedy shall not be exclusive of any other remedies available to GBCA, nor shall it be deemed an election of remedies by GBCA.

8. INTELLECTUAL PROPERTY RIGHTS

- a) **(Retention of all rights):** The Applicant agrees that the GBCA retains all copyright and other proprietary rights in the Rating Tool, Submission Guidelines, GBCA's Confidential Information and the Trade Mark ("**GBCA IP**") and agrees not to use GBCA IP except in accordance with this Agreement and the Marketing Rules.
- b) **(No unauthorised display of documents):** The Applicant agrees that it will not reproduce, display or distribute any GBCA IP or any documents provided to it in connection with this Agreement or the

Submission Guidelines 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 Submission Guidelines.

- c) **(Unauthorised use):** Unauthorised use of GBCA IP is prohibited. All text, graphics, layout and other elements of content contained in the GBCA IP are owned by the GBCA and are protected by intellectual property and other Laws.
- d) **(Co-operation and assistance):** The Applicant, if it suspects any infringement or threatened infringement of the GBCA IP or any misleading or deceptive conduct relating to the GBCA IP, 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 GBCA IP.

9. APPLICANT WARRANTIES, ACKNOWLEDGEMENTS & INDEMNITIES

9.1 Warranties and Undertakings

- a) The Applicant warrants and undertakes that:
- (i) **(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;
 - (ii) **(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;

- (iii) **(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; and
 - (iv) **(relevant authority):** it has the authority of all relevant persons to enter into this Agreement and to apply for the Independent Assessment and acquire the Trade Mark licence.
- b) **(Design Review only):** should a Design Review Certified Rating be awarded, the Applicant agrees:
- i) it will not promote such rating in any way that gives the impression that the Certified Rating applies to any part of the Project apart from the Design;
 - ii) the right to promote the Design Review Certified Rating is conditional on the Applicant proceeding to seek an As Built rating;
- c) **(Notification of Date of Practical Completion):** the Applicant agrees to notify the GBCA of the Date of Practical Completion within 3 months after such date; and
- d) **(Project only):** should a Certified Rating be awarded, the Applicant agrees it will not promote or use the Certified Rating for the Project in any way so that it may be considered (or the GBCA notifies the Applicant) that the Certified Rating applies to any other building or fitout apart from the Project.
- a) The Applicant acknowledges that GBCA is a non-profit organisation engaged in the effort to lessen the environmental impacts of buildings and communities, and that the Green Star Rating Tools, while regulated by specific policies and standards developed by GBCA, also require discretion and judgment. The decision whether to grant or deny certification to a Project will be based on the results of the Independent Assessment.
- b) In no event shall GBCA or a Certified Assessor have any liability as a result of any decision to grant or not to grant any Certified Rating Certificate to the Project (or any portion of the Project) for any reason.
- c) Without limiting the broad scope of this clause, the Applicant agrees and acknowledges that:
- (i) Certified or Performance Rating Certificates are not a representation, and do not mean that the Project (or any precinct, individual building(s) or interior space(s) comprising the Project) is structurally sound or safe, constructed in accordance with applicable laws, regulations or codes, free of mold or mildew, or free of volatile organic compounds or allergens or toxins, or that the Project (or any individually registered building interior space, community project comprising the Applicant's Project) shall achieve a relative or specified level of carbon or energy efficiency, performance, or use of renewable, recycled or recyclable resources as a result of any Certified Rating Certificate;
 - (ii) Any grant of Certified or Performance Rating Certificates does not mean that GBCA endorses, verifies or agrees with any Project information that has been provided or represented to it;

9.2 Acknowledgement

- (iii) Any grant of Certified or Performance Rating Certificates shall not guarantee any carbon or energy efficiencies, cost savings or economic benefits in relation to the Project, or any government incentive or tax benefits; and
- (iv) Any grant of Certified or Performance Rating Certificates does not guarantee the Applicant the satisfaction of any mandates or requirement for the Project to be constructed "Green".

9.3 Release and Indemnity

(Release and indemnity): Except to the extent directly caused or contributed to by any wrongful act, omission, negligence or default of the GBCA, its officers, employees, agents, contractors (including any Certified Assessor or any member of the Technical Advisory Panel), and subject to the terms of this Agreement, upon signing this Agreement, the Applicant releases and indemnifies the GBCA, its officers, employees, agents, contractors (including any Certified Assessor or any member of the Technical Advisory Panel) and agrees to keep them indemnified from and against any claims, demands, liabilities, losses, damages, costs or expenses arising out of its application under the Process, the GBCA's assessment of its application, the Independent Assessment, the Green Star Rating issued 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 after this date have a right to assert against such parties as a result of the Applicant's use of, or reliance on, the Rating Tool, the Submission Guidelines or any related documentation.

9.4 Survival of Releases and Indemnity

(Survival of Releases and Indemnity): The releases and indemnities given by the Applicant under this Agreement shall continue to apply after the termination of this Agreement.

10. PUBLICITY

10.1 Compliance with Marketing Rules

The Applicant agrees to comply with the Marketing Rules for Green Star Projects as displayed on the Website in relation to its promotion of the Certified Rating in respect of a Project.

10.2 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; and
- c) **(publicity relating to outcome):** publicise the outcome of the Independent Assessment.

10.3 GBCA Publicity Rights

Subject to clause 10.4, the Applicant agrees that the GBCA may provide special recognition for the Project if, in the GBCA's opinion, the Project achieves outstanding or otherwise notable results in the Independent Assessment.

10.4 Approval of Publicity and Promotions

The parties agree that they will not engage in publicity or promotion of the nature specified in this clause 10 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.

GENERAL OPERATION

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) **(Breach):** is in breach of any term of this Agreement and if that breach is capable of remedy, has not remedied the breach within 10 days of notice to do so;
- b) **(Design Review only):** has achieved a Design Review Certified Rating and, in the reasonable opinion of the GBCA, has no intention of seeking the award of an As Built Certified Rating for the Project;
- c) **(misleading conduct involving GBCA):** 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;
- d) **(transfer without approval):** sells, transfers, assigns or otherwise disposes of the Rights other than in accordance with clause 6; or
- e) **(delay by Applicant):** in the sole opinion of the GBCA, has delayed the Independent Assessment for the Certified Rating by any one or more acts or omissions which results in the Independent Assessment not being completed by:
 - i) the date occurring 12 months following the date on which the GBCA notifies the Applicant the outcome of the initial assessment; or
 - ii) if the rating tool is Green Star – Design & As Built or Green Star – Interiors, the date occurring 24

months after the Date of Practical Completion; or

- iii) the date occurring 3 years from the date of this agreement; or
- f) any of the following events occur by or in relation to the Applicant:
 - (i) **(performance default):** any default under this Agreement resulting from failure by the Applicant to perform any provision of, or obligation under, this Agreement, except for a rectifiable default, which is rectified within 10 days following written notice from the GBCA requiring rectification;
 - (ii) **(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;
 - (iii) **(administration):** the appointment of any administrator of the Applicant;
 - (iv) **(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;
 - (v) **(business cessation):** the cessation or proposal for cessation of business generally by the Applicant;
 - (vi) **(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; and
- (vii) **(Trade Mark Rules):** If any of the events in Part 4 of the Trade Mark Rules giving the GBCA the right to terminate occurs.

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 of this Agreement:

- 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, 9 and 10 to 20 of this Agreement survive termination; and
- 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, 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 a 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.

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 Submission Guidelines, the Independent Assessment 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 Submission Guidelines, the Independent Assessment 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:

- (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.

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

a) **(Confidential information):** Subject to any other provision of this Agreement, each party will keep confidential all the Confidential Information provided to it.

b) **(Limited disclosure):** The GBCA and the Applicant may disclose Confidential Information of the other, if:

- (i) such disclosure is required by Law;
- (ii) such disclosure is necessary to perform the obligations under this Agreement and provided the recipient of the Confidential Information agrees to keep it confidential;

(iii) the Confidential Information is or becomes generally available in the public domain through no breach of this Agreement; or

(iv) the GBCA or the Applicant can demonstrate that it knew the Confidential Information before the other party to this Agreement disclosed such Confidential Information.

c) **(Survival):** This clause 13 shall continue to apply after the Termination of the 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

17.1 Assignment with consent

Subject to clause 17.2, the Applicant shall not assign, transfer or novate any right or liability under this Agreement without the prior consent of the GBCA.

17.2 Change of Ownership Agreement

Where the Applicant proposes to sell, transfer or otherwise dispose of any or all its rights in relation to the Project or the Design the Applicant must first deliver to GBCA a copy of the Change of Ownership Agreement in the form set out in Schedule 6 of this Agreement, duly signed by the proposed new owner of the Applicant's rights.

18. NOTICES

18.1 Form

Any notice to or by a party under this Agreement shall be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender, including any director, secretary or person notified in that capacity by that corporate party, or under the seal of or any power of attorney conferred by the sender.

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 changes.

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 the email is opened and receipt acknowledged except where the time of dispatch is not between 09:00am and 5:00pm 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.

19. DISPUTE RESOLUTION

19.1 Disputes regarding Certification

The provisions of Part 6 of the Trade Mark Rules shall apply to any Dispute concerning, either partly or wholly:

- a) **(no Certified Rating)**: a decision by the GBCA to refuse to grant a Certified Rating; or
- b) **(Trade Mark use)**: a decision by the GBCA to refuse to allow the use of the Trade Mark for any reason.

19.2 Other Disputes

Clauses 19.3 and 19.4 shall apply to Disputes concerning matters not covered by Clause 19.1 ('**Non-Certification Disputes**').

19.3 Notice of Dispute

If there is a Non-Certification Dispute, then within five Business Days of a party notifying the other party in writing of the Non-Certification Dispute, a senior representative from each party must meet and use all reasonable endeavours acting in good faith to resolve the Non-Certification Dispute by joint discussions.

19.4 Mediation

- a) If the Non-Certification Dispute is not resolved within 10 Business Days of notification under clause 19.3, either party may refer the Non-Certification Dispute to mediation in accordance with this clause 19.4 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 matter has been referred to mediation, by a person appointed by the Chair of LEADR or the Chair's designated representative.
- d) Any mediation meetings or proceedings under this clause must be held in Sydney.
- e) The LEADR Mediation Rules (as amended from time to time) will apply to the mediation.
- f) 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.

- g) 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.
- h) It is a condition precedent to the right of either party to commence arbitration or litigation, that it has first offered to submit the Non-Certification Dispute to mediation.

19.5 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 urgent interlocutory relief.

19.6 Continuation of Rights and Obligations

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

20. GOVERNING LAW

20.1 Applicable Law

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

20.2 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.

20.3 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.

20.4 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, including an Applicant Agent.

20.5 Applicant Agent

If an Applicant Agent has entered this Agreement, GBCA:

- a) has no obligation to render any decision or provide any other information with respect to the certification of any Registered Project until the Applicant provides a Confirmation of Agent's Authority form to GBCA;
- b) agrees that the Applicant Agent has no responsibility for the breach of any contractual obligations arising from the Agent's authorised conduct on the Applicant's behalf; and
- c) in its sole discretion, may treat the Confirmation of Agent's Authority invalid if the Applicant makes any attempt to modify the terms of the Confirmation of Agent's Authority.

20.6 Pre-Contractual Negotiation

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter. 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 in connection with its

subject matter. Neither party has relied on nor is relying on any other Conduct in entering into this Agreement and completing the transactions contemplated by it.

20.7 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.

20.8 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.

20.9 Remedies

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

20.10 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.

20.11 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.

21. EXECUTION

By selecting the button in the Registration marked “Accept Certification Agreement” the Applicant agrees to the terms, conditions and provisions represented in this Agreement.

The Applicant acknowledges that it has read and understood this Agreement and all Schedules and Annexures, all program, policies and guidelines, including the Rating Tool, Submission Guidelines, Fee Schedule, and Trade Mark Rules, and that it has been provided the opportunity to maintain a record of this Agreement, all such ancillary documents, all policies and guidelines.

Further, the Applicant understands that by agreeing to these terms, it will be bound to a legally enforceable contract no different than a contract expressed on paper and physically signed by the Applicant. To the extent that the Applicant accepts this Agreement, GBCA shall maintain an electronic record of this Agreement which the Applicant may request to review and download at any time.

SCHEDULE 1 – VALIDITY PERIOD OF CERTIFIED RATINGS

The Validity Period of Certified Ratings and Performance Ratings varies as follows:

| Certified Rating | Validity Period |
|---|---|
| Design Review Certified Ratings | Expires on the date the Project achieves an As Built Certified Rating; or Expires on the date 24 months after the date of Practical Completion of the Project. (whichever occurs first) |
| As Built Certified Ratings | Unlimited Validity Period. No expiry for the following tools: <i>Green Star – Design & As-Built</i> <i>Green Star – Interiors</i> |
| Green Star – Communities Certified Ratings | Expires 5 years after the date of the Certified Rating Certificate. |
| Green Star – Performance Ratings | Expires 3 years and 90 days after the date of the Performance Rating Certificate. |

SCHEDULE 2 – PERFORMANCE RATING ADDITIONAL STEPS

Where an Applicant is seeking a Performance Rating the following additional provisions apply.

INDEPENDENT ASSESSMENT FOR PERFORMANCE RATING

- a) **(Applicant's undertakings):** The Applicant agrees that:
- (i) it will notify the GBCA of the Performance Period within 90 days of the date of Registration Date;
 - (ii) where the Applicant is seeking a Portfolio Rating, it will provide the GBCA with a list of all the buildings to be included in the Portfolio, in the Registration;
 - (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; and
 - (v) it will submit Yearly Performance Data within 90 days of each of the first and secondary anniversary of the award of a Performance Rating.
- b) **(GBCA's undertakings):** The GBCA agrees that:
- (i) it will, 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 Performance Rating Certificate and an email confirming the Performance Rating; and
 - (ii) where a Portfolio Rating is sought, upon the award of a Performance Rating for each of the buildings included in the Portfolio, if all relevant

criteria have been fulfilled and the Applicant is not in breach of this Agreement, the GBCA will award the Applicant a Portfolio Rating evidenced by an email and certificate confirming the Portfolio Rating.

- c) **(Trade Mark licence):** The GBCA grants to the Applicant for the duration of the Validity Period a non-transferable, non-exclusive licence to use the Trade Mark showing the Performance Rating solely in relation to the Project and the display, promotion and advertising of the Project. The Applicant will use the Trade Mark in accordance with the Marketing Rules and the Agreement.

The Applicant must either register for recertification during the second year of the Validity Period or cease use of the Trade Mark at the end of the Validity Period.

- d) **(Additional provisions):** The following provisions of the Agreement apply to Applicants for Performance Ratings with the expression *Performance Rating* replacing *Certified Rating* in those clauses:

- (i) Clause 4 Independent Assessment
- (ii) Clause 6 Transfer of Rights in Project;
- (iii) Clause 7 Licence of Trade Mark
- (iv) Clause 9.1(d) Warranties and Undertakings
- (v) Clause 10 Publicity
- (vi) Clause 11.1 (e), 11.4 (b) and (c)

INTERPRETATION – ADDITIONAL DEFINITIONS

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

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

“Performance Rating” means a rating of zero to six stars that may be awarded by the GBCA under this Agreement, entitling the Applicant to a limited licence to use the Trade Mark and publicise the Applicant’s Performance Rating. A Performance Rating includes a Portfolio Rating;

“Second Round” means the submission by the Applicant of further documentation to

demonstrate compliance with the Rating Tool in response to the initial determination of the Certified Assessor(s) in respect of the Premises issued prior to the GBCA awarding the Performance Rating; and

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

SCHEDULE 3 – LIMITATION OF TRUSTEE LIABILITY

This Schedule is only applicable to Trustees and Trustee Companies.

1. If the Applicant is a trustee, the Applicant enters into and performs this Agreement and the transactions it contemplates only in its capacity as trustee of the Trust (and, if the Trust is a registered scheme under the *Corporations Act 2001* (Cth) ("**Corporations Act**"), in its capacity as responsible entity of the Trust) and in no other capacity. This applies also in respect of any past and future conduct (including omissions) under or relating to this Agreement or those transactions.
2. Under and in connection with this Agreement and those transactions and conduct:
 - a. the Applicant's liability (including for negligence) is limited to the extent to which it can be satisfied out of the assets of the Trust. The Applicant need not pay any such liability out of other assets;
 - b. the GBCA may only do the following (but any resulting liability remains subject to the limitations in clause 2(a) of this Schedule):
 - i. prove and participate in, and otherwise benefit from, any form of insolvency administration of the Applicant in its capacity as trustee (and, if applicable, responsible entity) of the Trust only and only with respect to the Trust assets;
 - ii. exercise rights and remedies with respect to the Trust assets, including but not limited to set-offs and seeking orders for the appointment of a court-appointed receiver over Trust assets;
 - iii. enforce its security (if any) and exercise contractual rights against the Applicant in its capacity as trustee (and, if applicable, responsible entity) of the Trust only; and
 - iv. bring any other proceedings against the Applicant in its capacity as trustee (and, if applicable, responsible entity) of the Trust only, seeking relief or orders that are not inconsistent with the limitations in this clause,but may not otherwise:
 - v. bring proceedings against the Applicant in any capacity other than as trustee (and, if applicable, responsible entity) of the Trust;
 - vi. take any steps to have the Applicant placed into any form of insolvency administration (but this does not prevent the appointment of a receiver, or a receiver and manager, in respect of Trust assets); or
 - vii. seek by any other means (including set-offs) to have a liability of the Applicant to GBCA (including for negligence) satisfied out of any assets of the Applicant other than Trust assets.
3. Clauses 1 and 2 of this Schedule apply despite any other provision in this Agreement but do not apply with respect to any liability of the Applicant to GBCA (including for negligence):

- a. to the extent that the liability is not satisfied because the Applicant has no right or power to have the Trust assets applied towards satisfaction of that liability, or its right or power to do so is subject to a deduction, reduction, limit or requirement to make good, in any case because the Applicant has acted beyond power in relation to the Trust or improperly in relation to the performance of its duties as trustee (and, if applicable, responsible entity) of the Trust; or
 - b. under Clause 5 of this Schedule.
- 4. The limitation in clause 2(a) of this Schedule is to be disregarded for the purposes (but only for the purposes) of the rights and remedies described in clause 2(b) of this Schedule, and interpreting this agreement and any security for it, including determining the following:
 - a. Whether amounts are to be regarded as payable (and for this purpose damages or other amounts will be regarded as payable if they would have been owed had a suit or action barred under clause 2(b) of this Schedule been brought);
 - b. The calculations of amounts owing; or
 - c. Whether a breach or default has occurred,but any resulting liability is still subject to the limitations in clause 2(a) of this Schedule.
- 5. The Applicant represents and warrants that, as at the date of this Agreement and for the duration of the Agreement:
 - a. it has the right to be indemnified out of the assets of the Trusts for all liabilities incurred by the Applicant under this Agreement, and this right has not been limited in any way, and it has no liability which may be set off against that right of indemnity;
 - b. it is solvent and there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable; and
 - c. the Trust instrument is complete, true and correct.
- 6. Where the Applicant issues a notice of meeting (or becomes aware that one or more Trust investors has issued a notice of meeting) to Trust investors seeking approval for the Applicant to be replaced as responsible entity of the relevant Trust, the Applicant will promptly provide written notice to GBCA of the replacement proposal. Such written notice shall be provided at least 14 days before the date of the investor meeting and include the details of the proposed new responsible entity and the proposed replacement date.
- 7. Where the Applicant proposes to sell, transfer or otherwise dispose of any or all its rights in relation to the Project or the Design by way of change of trustee, the Applicant must:
 - a. if the relevant Trust is not a registered scheme, deliver to GBCA a copy of any Change of Ownership Agreement, duly signed by the proposed new owner of the Applicant's rights (in the form set out in Schedule 6 of this Agreement); or
 - b. if the relevant Trust is a registered scheme, deliver to GBCA details of the novation of this Agreement under s601FT of the Corporations Act including details of the new owner of the Applicant's rights and contact information.

SCHEDULE 4 – TRADE MARK RULES

The Trade Mark Rules are available here:

1. **[Certification Trade Mark no 1497148:](#)**

These Rules are applicable where the Rating Tool is Green Star – Design & As Built and Green Star – Interiors.

2. **[Certification Trade Mark no 1508439:](#)**

These Rules are applicable where the Rating Tool is Green Star – Communities.

SCHEDULE 5 – CONFIRMATION OF APPOINTMENT OF AGENT

RECITALS

- A.** This Confirmation of Agent's Authority (**Confirmation**) provided to GBCA will be effective upon GBCA's receipt of an executed copy via the upload to "Details" section within the Green Star Certification Application (**Application**).
- B.** This Confirmation is part of, and subject to, the Green Star Certification Agreement ("Certification Agreement") between the Applicant and GBCA.

1. PROJECT

This Confirmation applies to the Project identified below:

Project Name

ID Number

2. APPLICANT

The term Applicant, as defined in the Certification Agreement, is identified below:

Applicant Name

Applicant's Representative – if Applicant is an Organisation

Position

Email address

3. AGENT

The Agent, as that term is defined in the Certification Agreement, is the person identified below:

Name of Agent

Name of Agent's Representative – if Agent is an Organisation

Position

Email address

4. SCOPE OF AUTHORITY

- a) The Applicant confirms that the Agent has been granted authority to accept the Certification Agreement in relation to the Project on behalf, and with the full knowledge, of the Applicant.
- b) The Applicant understands that by providing this Confirmation, it will be bound by the actions of the Agent as if the same were taken directly by the Applicant.

5. REVOCATION OF AUTHORITY

- a) The Applicant acknowledges that the GBCA and its employees, agents, successors, and assigns will continue to rely on the representation of authority provided by this Confirmation unless and until the GBCA receives written notice from the Owner that the authority of the Agent to act on its behalf has been revoked, and the GBCA provides notice to the Applicant of the receipt and acceptance of the termination of authority.
- b) Any termination of authority only applies to the Agent's actions taken following GBCA's acknowledgement of the termination of the Agent's authority.

EXECUTION

The Applicant and Agent consent to all the provisions of this Confirmation by each ticking the box.

☐ Applicant

☐ Agent

SCHEDULE 6 - CHANGE OF OWNERSHIP AGREEMENT

RECITALS

- A.** This Change of Ownership Agreement (**Assignment**), made by and between the Owner and the Purchaser (defined below), will be effective upon the occurrence of both the Green Building Council of Australia's (**GBCA's**) receipt of an executed copy of the same via upload to the "Details" page within the Application and your receipt of written notice from the GBCA that this Assignment has been received and accepted.
- B.** This Assignment transfers the Owner's rights, title, and interest, and delegates the Owner's obligations and responsibilities, and duties under the Green Star Certification Agreement (**Agreement**), entered into by and between the GBCA and the Owner, to the Purchaser with respect to the Project.
- C.** In consideration of the mutual covenants made by the parties in this Assignment and for other good and valuable consideration, the parties make the following agreement.

1. PROJECT

This Assignment is effective for the Project identified below:

Project Name

ID Number

2. OWNER

The term Owner, as used in this Assignment, refers to the Applicant under the Agreement as identified below. [If multiple parties constitute an Owner as defined in the Agreement, this Assignment only applies to the specific party identified below, and the Agreement remains unaffected with respect to all other Owners.]

Owner

Owner's Representative – if Owner is an Organisation

Address

City

State

Postcode

email

3. PURCHASER

The term Purchaser refers to the party that acquires the rights of the Applicant under the Agreement and is identified below:

| | | | |
|-----------|-------|--|-------|
| Purchaser | | Purchaser's Representative – if Purchaser is an Organisation | |
| Address | | | |
| City | State | Postcode | email |

4. SCOPE OF ASSIGNMENT

- a) The Owner assigns all its rights, title, and interest, and delegates its obligations, responsibilities, and duties, in and to the Agreement, to the Purchaser. The Purchaser accepts this assignment and agrees to perform these obligations, responsibilities and duties.
- b) GBCA will recognise the Purchaser as the Owner's successor in interest to the Agreement, and the GBCA and the Purchaser will be bound by the terms and conditions of the Agreement in every way as if the Purchaser was named in the Agreement.
- c) In consideration of the GBCA accepting this Assignment, the Owner agrees to discharge and release GBCA from any and all obligations to the Owner, and waives any and all rights and/or claims it may have against GBCA as of GBCA's acceptance of this Assignment.
- d) In respect of any assignment occurring pre-Certification, and without limiting the above clauses, the Purchaser acknowledges that all submissions and representations made by the Owner in the Application, including without limitation, those made on the Owner's behalf, shall, as between the Purchaser and GBCA, be deemed the submissions and representations of the Purchaser, and all access to the Application and the Project Information contained in such documents shall be terminated with respect to the Owner and transferred to the Purchaser.
- e) Regardless of anything to the contrary in this Assignment, the Owner will continue to be bound by:
 - i. the following clauses of the Agreement, Clauses 9.2, (Acknowledgement), 9.3 (Release and Indemnity), 11 (Termination), 12 (Limitation of Liability), 13 (Confidentiality), 19 (Dispute Resolution) and 20 (Miscellaneous); and
 - ii. those clauses obliging the Owner to defend and indemnify GBCA from any and all Claims resulting from the Owner's performance prior to this Assignment, as well as those claims resulting from the Purchaser's subsequent performance.

5. AUTHORITY

The parties represent and warrant that the execution of this Assignment is within their respective organisational powers, and that such execution and performance has been duly authorised by all

necessary action, corporate or otherwise, does not require any consent of or filing with any third person or governmental body or agency, and does not violate any law or agreement.

EXECUTION

The Owner and Purchaser consent to all the provisions of this Assignment.

Owner

Signature of Owner

Name

Title

Date

Purchaser

Signature of Purchaser

Name

Title

Date

ANNEXURE A – TRADE MARKS

TRADE MARKS FOR GREEN STAR – DESIGN & AS BUILT, GREEN STAR – INTERIORS, AND GREEN STAR – COMMUNITIES RATING TOOLS*



TRADE MARKS FOR GREEN STAR – PERFORMANCE RATING TOOL

green building council australia

0  greenstar

green building council australia

1  greenstar

green building council australia

2  greenstar

green building council australia

3  greenstar



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