

GREEN BUILDING COUNCIL OF AUSTRALIA
EXPERT REFERENCE PANEL (ERP) MEMBER

CONFIDENTIALITY UNDERTAKING

Deed dated _____ **2013**

BY: _____ (Full Name)
of _____
_____ (Address)
(the "**ERP Member**")

AND IN FAVOUR OF: **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, New South Wales, 2000 (the "**GBCA**").

RECITALS

- A. The GBCA is developing a universal Green Star rating tool (the "**Rating Tool**") to assess the predicted performance of new buildings and major refurbishments.
- B. The GBCA has established an Expert Reference Panel ("**ERP**") to assist in the development of the Rating Tool.
- C. The GBCA has requested the ERP Member to accept engagement by the GBCA in accordance with the Terms of Reference attached to this Deed.
- D. The ERP Member, in the course of undertaking the task put forward by the GBCA to the ERP, may be provided with Confidential Information relating to the Rating Tool and/or the GBCA and may also have access to intellectual property owned by the GBCA.
- E. The ERP Member is willing to protect the confidentiality of the Confidential Information, in consideration of its disclosure by the GBCA, in compliance with this Deed.

THIS DEED WITNESSES:

1. INTERPRETATION

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

"**Confidential Information**" means all information, documents and data stored by any means relating to the Rating Tool or to the business, operations or affairs of the GBCA which is made available to the ERP Member by the GBCA and which is:

- (i) marked as confidential; or
- (ii) is of an inherently confidential nature and which the ERP Member knows or ought to know is confidential; or
- (iii) is agreed in writing by the parties to be confidential.

“Disclosure Purpose” means the disclosure of the Confidential Information by the ERP Member for the purpose of work required as an ERP Member, including providing a report and/or recommendations on the Rating Tool to the GBCA.

“Rating Tool” means the Green Star Design and Construction rating tool.

2. DISCLOSURE CONFIDENTIALITY

2.1 Positive Undertakings

Subject to clause 3, the ERP Member shall at any time from the date of this Deed:

- (a) **(confidentiality purpose)**: use all Confidential Information exclusively for the Disclosure Purpose; and
- (b) **(confidentiality retention)**: keep all Confidential Information fully confidential whether or not any Confidential Information has been specified as confidential.

2.2 Negative Undertakings

Subject to clause 3, the ERP Member shall not at any time from the date of this Deed, directly or indirectly, without the prior written consent of the GBCA:

- (a) **(unauthorised disclosure)**: disclose any Confidential Information to any person except to the extent that disclosure is strictly necessary to perform any duty connected with the Disclosure Purpose; and
- (b) **(unauthorised purpose)**: disclose or use any Confidential Information for any purpose, except the Disclosure Purpose.

3. PERMITTED DISCLOSURE

The provisions of this Deed shall not apply to any Confidential Information which:

- (a) **(specific consent)**: is disclosed by the ERP Member with the prior written consent of the GBCA (in relation to Confidential Information of the GBCA), in full compliance with the provisions of that consent;
- (b) **(public access)**: is or becomes generally available to the public in printed publications in general circulation in Australia or over or through the internet through no action, or default under or breach of this Deed by the ERP Member;
- (c) **(court proceedings)**: is disclosed by the ERP Member in compliance with any binding judicial order of any court or governmental agency or under any procedure for discovery in any legal action in or before any court or governmental agency;
- (d) **(legal compliance)**: is disclosed by the ERP Member in compliance with any law; or
- (e) **(independent development)**: has been separately and independently created by or on behalf of the ERP Member, his or her employer or company, or any related body corporate or controlled entity.

4. CONFIDENTIALITY SECURITY

The ERP Member shall at any time from the date of this Deed:

- (a) **(separate storage):** keep all Confidential Information, and information produced or generated based on or derived from the Confidential Information, separate from all business records and other documents of the ERP Member; and
- (b) **(copies):** make any copy or take any extract of any of the Confidential Information only if strictly necessary for the Disclosure Purpose.

5. INFORMATION REDELIVERY

The ERP Member shall upon request by the GBCA and without release of the ERP Member from any liability under this Deed:

- (a) **(redelivery)**: return and deliver to the GBCA all documents and other materials in his or her possession containing or incorporating any Confidential Information, except to the extent that the GBCA directs the destruction of those documents or materials; and
- (b) **(computer deletion)**: delete or erase any Confidential Information stored by the ERP Member in any computer or electronic information retrieval system, records or database.

6. INTELLECTUAL PROPERTY

All the legal interest in any intellectual property of the GBCA comprised in the Confidential Information shall be retained by and remain vested in the sole, exclusive, absolute and entire beneficial ownership of the GBCA.

EXECUTED as a deed.

ERP Member:

SIGNED by

ERP Member

Full Name:

in the presence of:

Witness

Full Name: