

Date: **INSERT WHEN FINAL**

Project: **INSERT NAME OF PROJECT**

Project Number: **INSERT NUMBER**

**GREEN BUILDING COUNCIL OF AUSTRALIA
(‘GBCA’)**

and

**[INSERT NAME OF APPLICANT]
(‘APPLICANT’)**

**GREEN STAR – OFFICE AS BUILT V2
CERTIFICATION AGREEMENT**

CERTIFICATION AGREEMENT

Agreement dated INSERT WHEN FINAL

PARTIES

1. GREEN BUILDING COUNCIL OF AUSTRALIA ACN 100 789 937, a company taken to be registered in the Australian Capital Territory of Level 4, 249 Pitt Street, Sydney NSW 2000 (“GBCA”); and
2. ACN of (“Applicant”).

RECITALS

- A. The “Green Star – As Built v2” rating tool (“Rating Tool”) has been developed by the GBCA to evaluate the environmental initiatives of Class 5 commercial office buildings and extensions of such buildings (base building construction or refurbishment).
- B. To earn a Certified Rating, the Applicant must satisfy specified prerequisites as defined in the “Assessment Criteria and Compliance Guide” section of the Technical Manual and be awarded a minimum number of Credits to attain a Green Star Rating of four, five or six stars.
- C. The Applicant is the owner of a refurbishment / of premises presently undertaking the design and construction / the construction / the extension of the Building (the “Premises”) on the land at [address of the building / proposed building] and wishes to apply for a Green Star Certified Rating of the Development being carried out on the Premises.
- D. The GBCA has agreed to commission a Certified Assessor(s) to carry out an Independent Assessment of the Development against the criteria set out in the Technical Manual.
- E. Subject to full compliance by the Applicant with its obligations under this Agreement, the Certified Assessor will, after completing the Independent Assessment, recommend a Green Star Rating in the range of 1 to 6 stars.
- F. Only a Green Star Rating of four stars or above will be a Green Star Certified Rating entitling the Applicant to a limited licence to use the Trade Mark and publicise the Applicant’s Green Star Certified Rating.
- G. This Agreement sets out the terms on which the certification will take place and the basis on which the Applicant may use and promote the Green Star Certified Rating for the Premises and the Trade Mark and associated logos.

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 any fee payable to the GBCA for the Independent Assessment, calculated in accordance with the schedule of fees contained in Schedule 1 to this Agreement, as varied by the GBCA from time to time;

“Building” refers to buildings or the design of buildings as may be represented by specifications or plans;

“Certification Date” means the date of issue of a Green Star Certified Rating Certificate to the Applicant (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/or such other accreditation courses or who has such other appropriate assessment qualifications as the GBCA may from time to time determine;

“Certified Rating” means a rating of four, five or six stars that may be awarded by the GBCA under this Agreement;

“Certified Rating Certificate” means a certificate to be awarded to the Applicant to provide confirmation of the Green Star Certified Rating awarded by the GBCA at the conclusion of an Independent Assessment that results in a Certified Rating;

“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 which either party becomes aware of pursuant to this Agreement;

“Credit” means point(s) counted towards the total score towards a Green Star Rating as specified in the Technical Manual and designated as a “Credit”;

“Credit Interpretation” means consideration and determination of the requirements for an Applicant to obtain a Credit where that Credit cannot be demonstrated by the Applicant in the way set out in the Technical Manual;

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

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

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

“**Development**” means the proposed building, refurbishment or extension as the case may be, on or of the Premises, including any development of the land upon which the Premises are, or are to be, located;

“**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 Fee,

in each case as varied at any time under any provision of this Agreement or any other agreement between the parties;

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

“**Independent Chair**” means a person independent of the GBCA, nominated by the GBCA, knowledgeable and with experience in the green building industry, who has such appropriate assessment qualifications as the GBCA may from time to time determine who is responsible for reviewing the report of the Certified Assessor prior to the Certified Assessor making a recommendation to the GBCA in respect of the Development;

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

“**Office As Built 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;

“**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 the Credit Interpretation Fees and Fees payable for additional inquiries made by the Applicant in accordance with clause 5.1(d):
- (i) if the Applicant does not engage in a Second Round, 28 days following the date of receipt by the Applicant of the following, as applicable:
 - (A) the GBCA Technical Working Group’s formal determination in respect of a Credit Interpretation; or
 - (B) the GBCA’s response to additional inquiries made by the Applicant in accordance with clause 5.1(d); and
 - (ii) if the Applicant engages in a Second Round, in respect of both Credit Interpretation Fees and Fees for additional inquiries made by the Applicant in accordance with clause 5.1(d), contemporaneously with the lodgement by the Applicant of documents in respect of the Second Round;

“**Premises**” has the meaning given in recital C;

“**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 in respect of the Development issued prior to the GBCA awarding the Certified Rating in accordance with clause 4(b)(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 Manual**” means the version of the relevant Green Star rating tool Technical Manual current at the date of execution of this Agreement, as varied from time to time;

“**Technical Working Group**” means a committee of the GBCA designated as the “Technical Working Group”;

“**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

“**Website**” means the website of the GBCA located at www.gbcaus.org.

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, annexure, exhibit or attachment to, this Agreement including each subclause, paragraph and subparagraph of that provision;
- (g) **(references)**: any reference to a clause, schedule, annexure, exhibit or attachment is a reference to a clause of, or schedule, annexure, exhibit or attachment 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.

1.3 Trade Mark Rules

- (a) **(Trade Mark Rules)**: Certification and use of trade mark no. 960850 is subject to the certification trade mark rules lodged with IP

Australia (as amended from time to time) (the “**Rules**”). In the event of conflict or inconsistency between the provisions of this Agreement and the Rules, the provisions of the Rules will govern and prevail.

- (b) (**Amendments**): Each party to this Agreement will perform any action necessary to amend any conflicting provision of this Agreement upon request by any other party.

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) (**Applicants acceptance of services**): The Applicant has agreed to submit the building 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 which do not fall within clauses 5.1(a) or 5.1(e) of this Agreement; and
- (c) **(Credit Interpretation Fees):** any Credit Interpretation Fee that may be incurred in relation to any Credit Interpretation that may be provided by the GBCA under this Agreement.

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 GST 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 GST tax invoices, in addition to any other requirement of this provision.

3.3 Fee Payment

- (a) **(Payment):** The Applicant shall pay any Fee before the later of the Payment Date applicable to that Fee and the date being 28 days subsequent to receipt of the Payment Claim for that Fee.
- (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 will provide the Certified Assessor with all information reasonably requested by the Certified Assessor in order to complete the Independent Assessment;
 - (ii) it will provide access to the Certified Assessor to the Premises, upon not less than 24 hours' notice by the GBCA to the Applicant, for the purposes of collecting information (as required in the "Guidelines for Collecting Data" contained in the Technical Manual) to allow the Independent Assessment to be performed;
 - (iii) at the earliest possible time and preferably at the design concept stage, the Applicant will provide all consultants and contractors involved in the design, construction, commissioning and management of the Development with written notice of the Applicant's commitments under this Agreement and provide to each of them a copy of this Agreement and any relevant associated documentation;
 - (iv) it will provide the GBCA with a list of the consultants and contractors engaged in relation to the Development;
 - (v) the GBCA has the right to conduct audits of the Applicant's advice to its consultants and contractors regarding the Applicant's commitment to this Agreement; and
 - (vi) it will comply with all the terms and conditions contained in the Technical Manual 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) **(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) project manage the Independent Assessment; and
 - (iii) subject to sub-clause 4(c), 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 a letter confirming the Certified Rating.
- (c) **(No rating):** GBCA may decline to issue a Green Star Certified Rating in its absolute discretion, in which event no further Fees will be payable and all Fees paid to date in respect of the application will be refunded.

5. INQUIRIES AND CREDIT INTERPRETATION REQUESTS

5.1 Inquiries

- (a) **(Complimentary Inquiries):** The Applicant may make up to four (4) inquiries of the GBCA without charge.
- (b) **(Mode of Inquiry):** The Applicant will make all inquiries by email to greenstar@gbcaus.org;
- (c) **(Calculation of Free Inquiries):** Regardless of whether the Applicant makes an inquiry by email pursuant to clause 5.1(b), 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 free inquiries for the purposes of clause 5.1(a).
- (d) **(Additional Inquiries):** All inquiries by the Applicant in addition to the inquiries referred to in clause 5.1(a) will be charged at the rate of \$100.00 plus GST per inquiry.
- (e) **(Certified Assessor's Response):** For the purposes of calculating the number of free inquiries available to the Applicant pursuant to clause 5.1(a), the GBCA will not take into account any request for clarification made by the Applicant in response to written notification of the Certified Assessor's initial assessment of the Development.

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 Technical Manual and in such cases the Applicant may request a Credit Interpretation.
- (b) **(Credit Interpretation procedure):** Any request for a Credit Interpretation (each a “**Credit Interpretation Request**”) must be in accordance with the following procedure:
- (i) the Applicant must first consult the Technical Manual for guidance on compliance requirements and review the Credit Interpretation rulings on the Website;
 - (ii) if the Technical Manual does not adequately address the issue, then the Applicant may lodge a Credit Interpretation request with the GBCA using the Credit Interpretation Request form available on the Website;
 - (iii) subject to clause 5.2(c), each Credit Interpretation Request must be accompanied by a Credit Interpretation Fee in the amount of \$400.00 plus GST;
 - (iv) determination of the Credit Interpretation Request will be made by the GBCA’s Technical Working Group 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 GBCA’s Technical Working Group will constitute a new Credit Interpretation Request and the Applicant will be liable for a further Credit Interpretation Fee pursuant to clause 5.2(b)(iii).
- (c) **(Complimentary Credit Interpretation Request):** The Applicant may lodge up to two (2) Credit Interpretation Requests with the GBCA without charge.

6. WARRANTIES AND INDEMNITIES BY THE APPLICANT

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) **(procedural fairness):** the rules of natural justice or procedural fairness do not apply in respect of the GBCA’s consideration of the

Applicant's application or to the forming of the GBCA's opinion under sub-clause 4(c);

- (d) **(accurate information):** the information the Applicant will provide to the Certified Assessor and the GBCA, its employees, agents and independent contractors (if any) under this Agreement is true, accurate and complete in all respects;
- (e) **(relevant authority):** it has the authority of all relevant persons to enter into this Agreement and to apply for the Independent Assessment;
- (f) **(Design only):** should a Certified Rating of the Design be awarded, it will not promote or use the Certified Rating for the Development or the Premises, in any way so that it may be considered (or the GBCA notifies the Applicant) that the Certified Rating applies to the Development or the Premises apart from the Design;
- (g) **(Extension Certified Ratings):** should a Certified Rating be awarded only in relation to a Development, being an extension of the Premises, it will not promote or use the Certified Rating, by any act or omission in any way so that it may be considered (or the GBCA notifies the Applicant) that the Certified Rating applies to any other part of the Premises;
- (h) **(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 Working Group and any Independent Chair) 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 Green Star Rating Tool, the Technical Manual or any related documentation;
- (i) **(no disparagement):** it will not disparage nor otherwise adversely comment upon the GBCA, any of its officers, agents, employees or independent contractors, the Certified Assessor, Technical Working Group, Technical Manual, the Application process, its consideration and determination or the Certified Rating or other rating that the Applicant may or may not be awarded; and
- (j) **(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.

7. PUBLICITY

7.1 Reciprocal Publicity Rights

Either party may:

- (a) **(articles or papers)**: if a Certified Rating is awarded to the Applicant, 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)**: if a Certified Rating is awarded to the Applicant, engage in commercial promotions relating to the Applicant's participation in the Independent Assessment;
- (c) **(publicity relating to outcome)**: if a Certified Rating is awarded to the Applicant, publicise the outcome of the Independent Assessment.

7.2 GBCA Publicity Rights:

Subject to clause 7.3, the Applicant agrees that the GBCA may provide special recognition for the Development and/or the Design if, in the GBCA's opinion, the Design achieves outstanding or otherwise notable results in the Independent Assessment.

7.3 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 DEVELOPMENT

In the event that the Applicant sells, transfers or otherwise disposes of its rights in relation to the Development and/or the Design ("**Rights**"), the Applicant must:

- (a) **(notification of transfer)**: notify the GBCA in writing of its intention to transfer the Rights before the transfer occurs;
- (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**") that the Purchaser can acquire the Rights, subject to the obligations, under this Agreement by:
 - (i) the Applicant assigning 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 (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 (e) or (f) respectively, terminate this Agreement, and

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

9. LICENCE OF TRADE MARK

- (a) **(Trade Mark licence):** If the Applicant is awarded a Certified Rating by the GBCA, the Applicant will be granted a non-transferable, non-exclusive license under this Agreement, from the Certification Date, to use and display the Trade Mark showing the Certified Rating in accordance with the Style Guide. This licence may not be sub-licensed. In particular, the Applicant may not permit any third party, including without limitation any contractor or consultant, to use the Trade Mark to promote its association with the Certified Rating, except by direct prior arrangement with the GBCA.
- (b) **(Prohibition on promotion by 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, that the Applicant will not be granted a licence under clause 9(a) to use the Trade Mark and will be prohibited from promoting its Green Star Rating.

10. INTELLECTUAL PROPERTY RIGHTS

- (a) **(Retention of all rights):** The Applicant agrees that the GBCA retains all copyright and other proprietary rights in the Green Star Rating Tool, GBCA's Confidential Information and the Trade Mark and agrees not to sell, modify, or use the Trade Mark except in accordance with this Agreement and the Style Guide.
- (b) **(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 Technical Manual, unless expressly authorised to do so under this Agreement

or the Technical Manual, in any way for any public or commercial purpose, including display on a website or in a networked environment.

- (c) **(Unauthorised use):** Unauthorised use of the Trade Mark will violate copyright and other laws, and is prohibited. All text, graphics, layout and other elements of content contained in the Green Star Rating Tool and the Trade Mark are owned by the GBCA and are protected by copyright, trade mark and other Laws.

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 giving the Applicant a written notice, if the Applicant:

- (a) **(misleading and deceptive conduct):** engages in any conduct in relation to the Green Star Rating Tool, the Independent Assessment or the Trade Mark which in the GBCA's reasonable opinion is likely to, or does, mislead or deceive; or
- (b) **(transfer without approval):** sells, transfers, assigns or otherwise disposes of its rights or obligations in relation to the Design and/or the Development, without obtaining the GBCA's prior written approval for the assignment of relevant rights and obligations to the Purchaser or transferee of the rights or obligations in relation to the Design and/or the Development,
- (c) **(delay by Applicant):** in the sole opinion of the GBCA, has delayed the Independent Assessment by any one or more acts or omissions and the Independent Assessment has not been completed by the date occurring 12 months following the date the Certified Assessor first contacts the Applicant to commence the Independent Assessment.

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

- (d) **(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;
- (e) **(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;
- (f) **(attachment):** the fact of any attachment against any asset of the Applicant;

- (g) **(security enforcement)**: the enforceability of any security interest over any asset of the Applicant securing payment for any amount subsequent to the occurrence of any default event under that security interest;
- (h) **(receivership)**: the appointment of any receiver over, or possession taken by any secured party of, any asset of the Applicant;
- (i) **(insolvency)**: cessation of payment generally by the Applicant or the inability of the Applicant, or the GBCA reasonably deciding the Applicant is unable, to pay all its debts as and when they become due and payable;
- (j) **(administration)**: the appointment of any administrator of the Applicant;
- (k) **(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;
- (l) **(debt arrangement)**: the creation by the Applicant of any debt arrangement with its creditors generally or any class of creditors;
- (m) **(business cessation)**: the cessation or proposal for cessation of business generally by the Applicant;
- (n) **(act of bankruptcy)**: the Applicant, if a natural person, committing an act of bankruptcy or compounding with his or her creditors;
- (o) **(operation of law of bankrupts)**: the Applicant, if a natural person, bringing his or her estate within the operation of any law relating to bankrupts; or
- (p) **(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. If the Applicant terminates this Agreement it will have no claim for reimbursement of any Fee paid or payable to the GBCA under this Agreement.

11.3 Consequences of termination

The following provisions shall apply where the GBCA terminates this Agreement in accordance with clause 11.1:

- (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, 7, 8 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, the Applicant shall:

- (i) immediately cease any and all use of the Trade Mark;
- (ii) remove the Certified Rating Certificate (if any) from public display;
- (iii) cease to promote or otherwise refer to the Certified Rating of the Building; and
- (iv) 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 Green Star 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 relevant Green Star rating tool, the Technical Manual or any related documentation and makes no warranty, expressed or implied, including the warranties 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 relevant Green Star Rating Tool, the Technical Manual 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 decision 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 of thing.
- (c) **(Statutory protection):** Nothing in this clause 12 operates to exclude, restrict or modify the application of any provision of the *Trade Practices Act 1974* (Cth) or any equivalent State or Territory legislation, or any rights conferred or liability implied by such provisions.

13. CONFIDENTIALITY

- (a) **(Confidential information):** Subject to any other provision of this Agreement, each of the GBCA and the Applicant 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) the Confidential Information is or becomes generally available in the public domain; or
 - (iii) the GBCA or the Applicant can demonstrate that it knew the Confidential Information before the other party to this Agreement disclosed it to it.

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

Each party shall pay its own costs in relation to:

- (a) **(documentation):** the negotiation, preparation, execution, performance, amendment or registration of, or any notice given or made; and
- (b) **(performance):** the performance of any action by that party in compliance with any liability arising,

under this Agreement, or any agreement or document executed or effected under this Agreement, unless this Agreement provides otherwise.

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 consent of the GBCA.

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

Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient and shall be effective for the purposes of this Agreement upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report.

19. GOVERNING LAW

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

19.1 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.

19.2 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.

20. GENERAL PROVISION

20.1 Amendments

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

20.2 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.

20.3 Pre-Contractual Negotiation

This Agreement:

- (a) **(entire agreement)**: expresses and incorporates the entire agreement between the parties in relation to its subject-matter, and all the terms of that agreement; and
- (b) **(collateral exclusion)**: supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject-matter or any term of that agreement.

20.4 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.

20.5 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.

20.6 Remedies

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

20.7 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.

20.8 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.

20.9 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.

SCHEDULE 1

SCHEDULE OF FEES

The Green Star – Office As Built Assessment Fee to GBCA members** is:

- less than 5,000m² \$5,500 + GST
- 5,000 – 10,000m² \$6,500 + GST
- 10,000 – 20,000m² \$8,500 + GST
- 20,000 – 40,000 m² \$11,500 + GST
- greater than 40,000m² \$15,500 + GST

The Assessment Fee to a non GBCA member*** is:

- less than 5,000m² \$6,325 + GST
- 5,000 – 10,000m² \$7,475 + GST
- 10,000 – 20,000m² \$9,775 + GST
- 20,000 – 40,000 m² \$13,225 + GST
- greater than 40,000m² \$17,825 + GST

****NOTE:** In order to claim the GBCA members discounted Assessment Fee the Applicant must be a member of the GBCA at the date of execution of this Agreement.

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:

SIGNED for and on behalf of **INSERT**)
NAME AND ACN by its corporate)
officers in accordance with Section)
127(1) of the *Corporations Act 2001*)
(Cth):

Director
Full Name:

Director/Secretary
Full Name:

SIGNED by
in the presence of:

Witness
Full Name:

Full Name:

ANNEXURE A

GREEN STAR TRADE MARKS

NOTE RELEVANT LOGO TO BE INSERTED ONLY ON PRINTED DOCUMENTS NOT ELECTRONIC

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