

Green Star Certification Agreement

Version 5 - July 2022

CERTIFICATION AGREEMENT

This Certification Agreement (Agreement) is entered into by the Applicant (as defined below) and the New Zealand Green Building Council Incorporated (NZGBC), a non-profit company taken to be registered at Level 2, Tower 1, 205 Queen Street, Auckland 1010, and constitutes a binding agreement between the Applicant, on the one hand, and the NZGBC, on the other hand.

The term Applicant refers to the individuals or entities that hold all legal rights 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 the NZGBC 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 NZGBC Green Star Certification Process (**Process**) to which the Applicant (and the Applicant Agent, if any) are bound.
- B The GBCA has granted the NZGBC an exclusive licence to use and develop the Green Star Rating system, the Rating Tools and their associated intellectual property in New Zealand.
- C The Rating Tools have been developed by the GBCA and modified by the NZGBC for use in New Zealand, to evaluate the design, construction and operation of sustainable projects.
- 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 project address specified in the Registration.
- E To earn a Certified Rating or Performance Rating of the Project against the Rating Tool, the Applicant must satisfy specified prerequisites as defined in the "Credit Criteria and Compliance Requirements" sections of the relevant Submission Guidelines and be awarded a minimum number of Points.
- F The NZGBC has agreed to commission one or more Certified Assessors to carry out an Independent Assessment of the Project against the Rating Tool and the criteria set out in the relevant Submission Guidelines.

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

INTERPRETATION

1.1 Definitions

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

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.

Agreement means this Agreement;

Appeal means additional consideration and determination of the requirements for an Applicant to obtain a Credit where the Applicant disagrees with the outcome of the Independent Assessment as determined by the Certified Assessors during the two rounds of Independent Assessment;

Appeal Fee means the fee charged by the NZGBC pursuant to clause 5, as varied by the NZGBC from time to time;

Application means the application for Registration by the Applicant requesting an Independent Assessment under this Agreement;

As Built Certified Rating (also known as "**Green Star Certified Built Rating**") means a rating of four to six stars awarded by the NZGBC to the Project within 24 months after the Project's practical completion under this Agreement. This includes the As Built Certified Rating for projects with the exclusion of the Performance Rating.

Assessment Fee means any fee payable to the NZGBC for the Independent Assessment, calculated in accordance with the schedule of fees set out in the Green Star [certification fees page at nzgbc.org.nz \(Green Star certification fees\)](#), as varied by the NZGBC from time to time;

Brand Guidelines is the defined term for the purposes of this Agreement to describe the Brand Guidelines document available on the Website (and amended by the NZGBC from time to time), which describes the terms of use by the Applicant of the Trade Mark;

Certified Assessor (also known as **NZGBC Assessor**) means a person or persons, independent of the NZGBC, nominated by the NZGBC, knowledgeable and with experience in the green building industry, who has passed the "Green Star NZ Accredited Professional Examination", and/or such other accreditation courses or who has such other appropriate assessment qualifications as the NZGBC may from time to time determine;

Certified Rating means a rating of four to six stars that may be awarded by the NZGBC under this Agreement, entitling the Applicant to a limited sublicence to use the Trade Mark and publicise the Applicant's Certified Rating. This includes the "As Built Certified Rating" "Design Review Certified Rating" and "Design Certified Rating" with the exclusion of the Performance Rating.

"Certified Rating Certificate" means a certificate to be awarded to the Applicant by the NZGBC 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 2, to be used according to clause 6.

"Charged Additional Review" or "CAR" means consideration and determination of the requirements for an Applicant to obtain a Credit where that Credit's requirements as set out in the relevant Submission Guidelines have not been achieved within the two rounds of Independent Assessment;

"Charged Additional Review Fee" means the fee charged by the NZGBC pursuant to clause 5, as varied by the NZGBC from time to time;

"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;

"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 the registration form, to be used according to clause 21.3;

"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;

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

"Design" includes, without limitation, all designs, plans and specifications relating to the Project;

"Design Certified Rating" (also known as **"Green Star Certified Design Rating"**) means a rating, solely available for Green Star NZ V3 projects, of four to six stars that may be awarded at the design phase of a Project by the NZGBC under this Agreement, in accordance with clause 9.1(b).; This does not include the Performance Rating and the Design Review Certified Rating.

"Design Review" means an Independent Assessment by one or more Certified Assessor(s) of the Project prior to the Date of 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 and a Design Certified Rating available for Green Star NZ V3;

Design Review Certified Rating means a rating, available for Green Star Design & As-Built NZ and Green Star Interiors NZ Projects, of four to six stars that may be awarded at the design phase of a Project by the NZGBC under this Agreement, in accordance with clause 9.1(b). This does not include the Performance Rating and the Design Certified Rating for Green Star NZ V3 projects.

"Extension of Time" means an offer from the NZGBC to the Applicant, allowing the Applicant an additional twelve (12) months within which to achieve a Certified Rating, where the applicant has not achieved a Certified Rating within the timeframes specified in clause 11.1 (e);

"Extension of Time Fee" means a fee payable to the NZGBC for an Extension of Time, calculated in accordance with the schedule of Fees set out in the Green Star [certification fees page](#) at nzgbc.org.nz ([Green Star certification fees](#)), as varied by the NZGBC from time to time;

"Fee" means:

- (a) the Assessment Fee; set out on the Green Star certification fees page at [nzgbc.org.nz: \(\[Green Star Certification fees\]\(https://nzgbc.org.nz/Green-Star-Certification-fees\)\).](https://nzgbc.org.nz/Green-Star-Certification-fees)
- (b) fees payable by the Applicant for Technical Questions which do not fall within clauses 5.1(a) or 5.1(b) of this Agreement;
- (c) any Charged Additional Review Fee;
- (d) any Appeal Fee; and
- (e) any Extension of Time Fee,

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

"GBCA" means the Green Building Council of Australia;

"Green Star NZ Accredited Professional Examination" means the examination set by the NZGBC from time to time for the purpose of accreditation of industry professionals and Certified Assessors;

"GST" means good and services tax charged in accordance with the Goods and Services Tax Act 1985 as amended from time to time;

"Independent Assessment" means an independent assessment by one or more Certified Assessor(s) of the Project;

"Law" includes any requirement of any statute, regulation, proclamation, ordinance or by-law, present or future;

"NZGBC IP" has the meaning given to that term in clause (a)a.i.1(a).

"Payment Claim" means any written claim made, or to be made, by the NZGBC 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 NZGBC 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 fees for Technical Questions (if any), the date 20 business days following the date of receipt by the Applicant of the formal determination in respect of a Technical Question;

"Performance Period" means the 12 month period against which the Project is rated when targeting a Performance Rating, 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 NZGBC 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 but does not include the Certified Rating;

"Performance Rating Certificate" means a certificate to be awarded to the Applicant by the NZGBC to provide confirmation of the Performance Rating being achieved;

"Points" means points available in each Credit and which count towards the total score used to determine a Certified Rating or Performance Rating;

"Portfolio" means the Applicant's Portfolio of Projects 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 projects included in the Portfolio that have achieved Performance Ratings;

"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;

"Purchaser" has the meaning given to that term in clause (c);

"Rating Tool" means the tool as published by the NZGBC in accordance with this Agreement and with its licence with the GBCA as outlined in recitals B and C, the version of which is current at the Registration Date and is specified in the Applicant's Registration to be used to assess the Project under this Agreement, and includes without limitation all modifications to the Rating Tool made by the NZGBC and all of the NZGBC's Confidential Information therein;

"Registration" means registration of a Project by emailing a completed registration form (available on the Website) to greenstarnz@nzgbc.org.nz;

"Registration Date" means the date designated as such by the NZGBC which will be on or about the date the NZGBC receives both a copy of the Applicant's Registration, an executed copy of this Agreement, and the Assessment Fee;

"Rights" has the meaning in clause 6;

"Round 1" means the first Independent Assessment of evidence submitted by the Applicant following Registration;

"Round 2" means an additional Independent Assessment of evidence submitted by the Applicant following Round 1 and prior to the NZGBC awarding the Certified Rating or Performance Rating;

"Services" means:

- (a) the Independent Assessment, consisting of up to two rounds of Independent Assessment (**Round 1** and **Round 2**);
- (b) any answers to Technical Questions; and
- (c) all other obligations and services to be performed by the NZGBC under this Agreement;

"Submission Guidelines" means the version of the relevant Green Star Rating Tool Submission Guidelines (also known as the Technical Manual) current at the date of execution of this Agreement and amended by the NZGBC from time to time;

"Taxable Supply" has the meaning given to that term in the Goods and Services Tax Act 1985 as amended from time to time;

"Technical Advisory Panel" means an advisory panel convened by the NZGBC and designated as the "Technical Advisory Panel";

"Technical Questions" has the meaning given to that term in clause 5(a);

"Trade Mark" means the trade mark or marks set out in the Brand Guideline to this Agreement, including all four, five or six star variants which have been licensed by the

GBCA to the NZGBC in accordance with the Intellectual Property Licence Agreement and any unregistered or registered and any certification Trade Marks used or applied for 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 NZGBC located at www.nzgbc.org.nz; and

"Yearly Performance Data" means data that is required to be submitted to the NZGBC to retain the Performance Rating for the Validity Period;

1.2 Interpretational Rules

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

- (a) **(Headings)**: headings and subheadings are for convenience only and shall not affect interpretation, except for specified cross-references
- (b) **(Plurality)**: words denoting the singular number include the plural, and the converse also applies;
- (c) **(Gender)**: words denoting either 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;
- (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) **(Business days)**: a reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in New Zealand. If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.

INDEPENDENT ASSESSMENT PROCESS

2. SERVICES SUPPLY

2.1 Supply and Acceptance

- (a) **(NZGBC's supply of Services)**: At the request of the Applicant, and in consideration of receipt of the Fee, the NZGBC 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 NZGBC and has requested an Independent Assessment and agreed to pay the Fees.

2.2 Contractual Relationship

- (a) (**Independent contractor**): The NZGBC and its employees, agents and contractors shall act in the capacity of an independent contractor, as between the NZGBC and the Applicant, in the performance of any obligation under this Agreement.
- (b) (**Exclusions**): This Agreement shall not create, or be construed to create, any express or implied relationship between the NZGBC, 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 NZGBC from executing any agreement with any third person relating to the supply or acquisition of the Services, whether the same or similar to the Services to be provided under this Agreement or otherwise, as decided by the NZGBC, subject to compliance with any liability of the NZGBC under any other provision of this Agreement (which will remain in force and be unaffected by the relevant agreement with any third party). For the avoidance of doubt, the NZGBC may subcontract any of its obligations under this Agreement (including the obligation to complete the Independent Assessment) to the GBCA.

3. PAYMENT

3.1 Applicant Fees

The Applicant shall be liable to pay to the NZGBC the Fee.

3.2 Payment Procedure

- (a) (**Payment Claim**): The NZGBC shall deliver to the Applicant a Payment Claim for any Fee due by the Applicant to the NZGBC under this Agreement.
- (b) (**Claim details**): Any Payment Claim shall specify:
- i. that it is a GST invoice;
 - ii. the Services for which the Fee is due;
 - iii. the date of supply of those Services;
 - iv. the aggregate total amount of the claim for the Fee;
 - v. any other amount then due and payable to the NZGBC; and
 - vi. the GST amount comprised in the total amount of the Payment Claim.
- (d) (**Tax invoice compliance**): The Payment Claim shall comply with any GST Law relating to the form or content of GST 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 20 business 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 Payment Date for that Fee at the rate of 12%

per annum, to accrue from day to day from the due Payment Date down to and including the actual date of payment in full.

- (c) (**Withholding of Assessment**): The NZGBC may withhold the final results of the Independent Assessment until all Fees due and owing by the Applicant to the NZGBC 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 NZGBC is in addition to and is not to the exclusion of any other rights or remedies the NZGBC 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 specified in the Submission Guidelines and reasonably requested by the Certified Assessor in order to complete the Independent Assessment;
 - ii. at the earliest possible time after executing this Agreement the Applicant will provide all consultants and contractors involved in the design, construction, commissioning and management of the Project 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;
 - iii. it will provide the NZGBC with a list of the consultants and contractors engaged in relation to the Project;
 - iv. 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 business days' notice by the NZGBC to the Applicant, for the purposes of collecting information to allow the Independent Assessment to be performed;
 - v. the NZGBC has the right to conduct audits of the Applicant's advice to its consultants and contractors regarding the Applicant's commitment to this Agreement;
 - vi. it will comply with all the terms and conditions contained in the Submission Guidelines and any additional eligibility criteria relevant to the nominated Rating Tool, together with such rulings and NZGBC technical clarifications in respect of such criteria as may be displayed on the Website; and
 - vii. where an Applicant is seeking a Performance Rating the following additional provisions apply. The Applicant agrees that:
 - a. it will notify the NZGBC of the Performance Period within 90 business days of the Registration Date;
 - b. where the Applicant is seeking a Portfolio Rating, it will provide the NZGBC with a list of all the Projects to be included in the Portfolio, in the Registration;
 - c. it will submit Round 1 documentation for assessment within 90 business days of the end of the Performance Period;
 - d. it will submit Round 2 documentation within 90 business days of receiving results of the Round 1 assessment;

- e. it will submit Yearly Performance Data within 90 business days of each of the first and secondary anniversary of the award of a Performance Rating; and
- f. it will 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.

(b) **(NZGBC's undertakings):**

- i. The NZGBC agrees that it will:
 - a. set out in the Submission Guidelines a summary of the documentation required for the Independent Assessment;
 - b. manage the Independent Assessment and use reasonable endeavours to ensure the Independent Assessment is undertaken in a timely manner; and
 - 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 (including non-payment of Fees), award the Applicant a Certified Rating or Performance Rating evidenced by a Certified Rating Certificate or Performance Rating Certificate and an email confirming the Certified Rating or Performance Rating.
- ii. Where an Applicant is seeking a Performance Rating the following additional provisions apply. The NZGBC agrees that:
 - a. 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 NZGBC will issue a new Performance Rating Certificate and an email confirming the Performance Rating; and
 - b. where a Portfolio Rating is sought, upon the award of a Performance Rating for each of the projects included in the Portfolio, if all relevant criteria have been fulfilled and the Applicant is not in breach of this Agreement, the NZGBC will award the Applicant a Portfolio Rating evidenced by an email and certificate confirming the Portfolio Rating.
- iii. **(Rating Tool to be Assessed Under);** The NZGBC shall assess the Project using the version of the nominated Rating Tool current as at the Registration Date, provided that, prior to the date on which the Applicant's Design is submitted to the NZGBC for Independent Assessment the NZGBC may make minor variations to the nominated Rating Tool for the purposes of clarification or rectification of errors.

5. TECHNICAL QUESTIONS, CHARGED ADDITIONAL REVIEWS, APPEALS AND EXTENSIONS OF TIME

5.1 TECHNICAL QUESTIONS

- (a) **(Complimentary Technical Question):** The Applicant may make up to four (4) technical questions of the NZGBC ("**Technical Questions**") without charge.
- (b) **(Mode of Inquiry):** The Applicant will make all inquiries by submitting the Technical Question form via email to greenstarnz@nzgbc.org.nz.

- (c) (**Charged Technical Questions**): All inquiries by the Applicant in addition to the Technical Questions referred to in clause 5.1(a) will be charged at the rate of \$400.00 plus GST per inquiry.
- (d) (**Certified Assessor's Response**): For the purposes of calculating the number of free Technical Questions available to the Applicant pursuant to clause 5.1(a), the NZGBC 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 Project.
- (e) The NZGBC may at its discretion amend the number of free, and cost of additional Technical Questions set out in clauses 5.1(a), (c) and (d).
- (f) Any further information submitted by the Applicant following a determination will constitute a new Technical Question and the Applicant will be liable for a further Technical Question.

5.2 Charged Additional Review

- (a) (**Request by Applicant**): In some cases an Applicant may not have achieved the requirements of a Credit within the two rounds of Independent Assessment and may request a Charged Additional Review to be undertaken following Round 2.
- (b) (**Charged Additional Review procedure**): Any request for a Charged Additional Review (each Credit submitted constitutes a Charged Additional Review) must be in accordance with the following procedure:
 - i. the Applicant must inform the NZGBC of the Credits which will be submitted for the Charged Additional Review within 20 business days of receiving the Round 2 comments;
 - ii. there is no limit to the number of Credits that may be submitted;
 - iii. each Charged Additional Review must be accompanied by a Charged Additional Review Fee in the amount of \$950.00 plus GST; and
 - iv. determination of the Charged Additional Review will be made by the Certified Assessors and will be made solely on the information provided by the Applicant in the Charged Additional Review submission.
- (c) Any further information submitted by the Applicant following a determination of the Certified Assessors will constitute a new Charged Additional Review and the Applicant will be liable for a further Charged Additional Review Fee pursuant to clause 5.2(b)(iii)
- (d) The NZGBC may at its discretion amend the maximum number of Charged Additional Review requests, and Charged Additional Review Fees set out in clause 5.2(b).

5.3 Appeals

- (a) (**Request by Applicant**): If the Applicant does not agree with the comments provided by the Certified Assessors following the Independent Assessment then the Applicant may request an Appeal.
- (b) (**Appeal procedure**): Any request for an Appeal (each Credit submitted constitutes an Appeal) must be in accordance with the following procedure:
 - i. The Applicant must inform the NZGBC of their intention to Appeal within 20 business days of receiving the certification outcome and clearly nominate the Credits that will be Appealed;
 - ii. There is no limit to the amount of Credits that are Appealed. Only Credits that were claimed in either Round 1 or Round 2 can be Appealed;
 - iii. No change to the Design, this Agreement or policy will be reviewed.
 - iv. No Design documentation retrospectively generated after the appropriate time in the Project's timeline/programme will be reviewed;
 - v. Each Appeal must be accompanied by an Appeal Fee in the amount of \$950.00 plus GST;

- vi. The Applicant has 40 business days from the date of the invoice to submit its Appeal;
 - vii. To ensure fairness of process, the Appeal assessment process will be conducted solely on the information provided by the Applicant at this stage, with no additional opportunities for clarification or resubmission;
 - viii. All Credits being Appealed must be submitted simultaneously in one package; and
 - ix. The outcome of the Appeal automatically supersedes the results of the previous certification process and is final.
- (c) The NZGBC may at its discretion amend the Appeal Fee set out in clause 5.3(b).

5.4 Extension of Time

- (a) **(Delay by Applicant):** Where the Certified Rating is delayed in accordance with clause 11.1 (e), the NZGBC may offer to the Applicant an Extension of Time. Any delay of the Performance Rating is not eligible for an Extension of Time for the purpose of keeping data validity.
- (b) **(Extension of Time procedure):** Any Extension of Time must be in accordance with the following procedure:
- i. The NZGBC will notify the Applicant not less than 60 business days in advance of the dates described in clause 11.1(e) that the Project may be considered delayed;
 - ii. If the Applicant does not achieve a Certified Rating prior to the dates described in clause 11.1(e) the NZGBC will offer to the Applicant an Extension of Time and send an invoice for the Extension of Time Fee;
 - iii. The Applicant may choose to respond by either:
 - a. Accepting the Extension of Time offer and paying the Extension of Time Fee within 40 business days of the date of the invoice; or
 - b. Cancelling the Project and terminating this Agreement in accordance with clause 11.2.
- If the Applicant accepts the Extension of Time, pays the Extension of Time Fee and does not achieve a Certified Rating within the 12 month Extension of Time period, the NZGBC may terminate this Agreement in accordance with clause 11.1 (e); and
- iv. If the Applicant does not respond within 40 business days of the date of invoice for the Extension of Time Fee, the NZGBC may terminate this Agreement in accordance with clause 11.1 (e).
- (c) The NZGBC may at its discretion amend the cost of the Extension of Time fee set out in its schedule of fees. .

6. TRANSFER OF RIGHTS IN THE PROJECT

6.1 Pre Certification Transfers

In the event that the NZGBC has not yet awarded a Certified Rating or Performance 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 NZGBC 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 NZGBC with a duly executed Change of Ownership Agreement, subject to the NZGBC's written consent; or
 - ii. negotiating a new agreement with the NZGBC, and the NZGBC may at 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 NZGBC may, in its discretion, impose on the Purchaser (such consent not to be unreasonably withheld or delayed);
- (e) **(new agreement):** negotiate a new certification agreement with the Purchaser; or
- (f) **(termination of Agreement):** if the Purchaser fails to agree to all the conditions imposed by the NZGBC pursuant to clause 6.1(d) above, or a new certification agreement is not entered into between the NZGBC and the Purchaser within 40 business days of the NZGBC notifying the Applicant and the Purchaser of its decision to assign or enter into a new agreement under clauses 6.1(d) or 6.1(e) respectively, terminate this Agreement; and
- (g) may make a public notice of any of the above actions.

6.2 Post Certification Transfers

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

- (a) provide the NZGBC with a duly executed Change of Ownership Agreement; or
- (b) provide the NZGBC with such other form of legally binding consent from the Purchaser to be bound by this Agreement satisfactory to the NZGBC 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. SUB-LICENCE OF TRADE MARK

7.1 Applicability

This clause 7 only applies if the Applicant is awarded a Certified Rating or Performance Rating by the NZGBC. If the Applicant is not awarded a Certified Rating or Performance Rating, the Applicant will have no rights to use the Trade Mark.

7.2 Trade Mark sub-licence

- (a) The NZGBC grants to the Applicant for the duration of the Validity Period, a non-transferable, non-exclusive sublicense to use the Trade Mark showing the Certified Rating or Performance Rating solely in relation to the Project and the display, promotion and advertisement of the Project, in accordance with the Brand Guidelines.
- (b) **(Trade Mark rules):** Use of any Trade Mark by the Applicant will be subject to any written instructions which NZGBC may provide to the Applicant from time to time.
- (c) **(Performance Rating Only):** The Applicant must cease use of the Trade Mark at the end of the Validity Period.

7.3 Conditional-transferability

This sub-licence may not be further 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 or Performance Rating, except with the prior written consent of the NZGBC.

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 NZGBC 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 or Performance Rating Certificate (if any) from public display; and
 - iii. cease to promote or otherwise refer to the Certified Rating or Performance Rating.

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

Upon expiry of the Trade Mark sub-licence under clause 7.2 or termination of the Agreement the Applicant shall:

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

7.6 Valuable Rights

- (a) The Trade Marks constitute valuable intellectual property held by the NZGBC and are protected by Law. The Applicant acknowledges and agrees that any unauthorised use of the Trade Marks constitutes both infringement of the NZGBC's intellectual property and a breach of this Agreement.
- (b) All rights not expressly granted under this Agreement are reserved by the NZGBC, and no sublicense 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 the NZGBC. The Applicant acknowledges and affirms the NZGBC'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 the NZGBC.
- (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 the NZGBC would sustain as a result of unauthorised use of the Trade Marks. The Applicant recognises that the NZGBC 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 the NZGBC, nor shall it be deemed an election of remedies by the NZGBC.

8. INTELLECTUAL PROPERTY RIGHTS

- (a) **(Retention of all rights):** The Applicant agrees that the NZGBC retains all copyright and other proprietary rights in the Rating Tool, Submission Guidelines, the NZGBC's Confidential Information and the Trade Mark ("**NZGBC IP**") and agrees not to use the NZGBC IP except in accordance with this Agreement and the Brand Guidelines.
- (b) **(No unauthorised display of documents):** The Applicant agrees that it will not reproduce, display or distribute any the NZGBC 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 the NZGBC IP is prohibited. All text, graphics, layout and other elements of content contained in the NZGBC IP are owned by the NZGBC 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 NZGBC IP or any misleading or deceptive conduct relating to the NZGBC IP, must immediately notify the NZGBC giving full particulars of all relevant circumstances. The Applicant will provide all information and assistance the NZGBC may reasonably require in any proceedings regarding the NZGBC IP.

9. APPLICANT WARRANTIES, ACKNOWLEDGEMENTS AND 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 or the NZGBC for registration of the Trade Mark or the maintenance of that registration;
 - ii. **(Protection of NZGBC's title):** it shall not do or cause to be done any act or thing which may impair the NZGBC's or the GBCA's right, title and interest in the Trade Mark;
 - iii. **(Accurate information):** the information the Applicant provides to the Certified Assessor, the NZGBC and 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.
- (b) **(Design Review only):** should a Design Review Certified Rating or a Design Certified Rating be awarded, the Applicant will not promote such rating in any way that gives the impression that the Design Review Certified Rating or the Design Certified Rating applies to any part of the Project apart from the Design. Should a Design Review Certified Rating be awarded, the right to promote the Design Review Certified Rating is conditional on the Applicant proceeding to seek an As Built Certified Rating.
- (c) **(Notification of Date of Practical Completion):** the Applicant agrees to notify the NZGBC of the Date of Practical Completion within 3 months after such date for a Certified Rating.

- (d) **(Premises forming part of a larger uncertified project):** Where a Certified Rating or Performance Rating is sought for a Project (or a part thereof) that forms part of a larger project for which a Certified Rating or Performance Rating has not been awarded, it will make clear to the satisfaction of the NZGBC in all advertising and promotional material the Certified Rating or Performance Rating applies only to that certified portion of the project.

9.2 Acknowledgement

- (a) The Applicant acknowledges that the NZGBC is a non-profit organisation engaged in the effort to lessen the environmental impacts of projects, and that the Rating Tools, while regulated by specific policies and standards developed by the GBCA and the NZGBC, 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 the NZGBC or a Certified Assessor have any liability as a result of any recommendation or decision to grant or not to grant any Certified Rating Certificate or Performance Rating Certificate to the Project (or any portion of the Project) for any reason.
For the purpose of section 12 of the Contract and Commercial Law Act 2017, the limitation of liability contained in this clause, constitutes a promise that is intended to confer a benefit on and be enforceable at the suit of the persons identified in this clause.
- (c) Without limiting the broad scope of this clause, the Applicant agrees and acknowledges that:
- i. Certified Rating Certificates 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 Laws, 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 Rating Certificates or Performance Rating Certificates does not mean that the NZGBC endorses, verifies or agrees with any Project information that has been provided or represented to it;
 - iii. Any grant of Certified Rating Certificates 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 Rating Certificates 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

- (a) **(Release):** Except to the extent directly caused or contributed to by any wrongful act, omission, negligence or default of the NZGBC, its officers, employees, agents, contractors (including any Certified Assessor or any member of the Technical Advisory Panel), upon agreeing to this Agreement, the Applicant releases the

NZGBC, its officers, employees, agents, contractors (including any Certified Assessor or any member of the Technical Advisory Panel) from:

- i. any claims, demands, liabilities, losses, damages, costs or expenses arising out of its Application, the NZGBC'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
 - ii. any causes of action for any injury, loss, destruction or damage (including, without limitation, equitable relief and economic loss) that it may now or hereafter have against such parties as a result of its use of, or reliance on, the Rating Tool, the Submission Guidelines, the Trade Mark or any related documentation.
- (b) **(Indemnity):** The Applicant agrees to indemnify each of the parties released under clause 9.3(a) for the matters described above, except to the extent that the relevant claim, demand, liability, damage, cost, expense or cause of action is directly caused or contributed to by any wrongful act, omission, negligence or default of the party seeking indemnity. The party seeking indemnity will take reasonable steps to mitigate its losses.

9.4 No Disparagement

(No disparagement): The Applicant and Agent will not publicly or formally disparage nor otherwise adversely comment upon the NZGBC, any of its officers, agents, employees or independent contractors, the Certified Assessor, Technical Advisory Panel, Submission Guidelines, the Application process, its consideration and determination of the Certified Rating, Performance Rating or other rating that the Applicant may or may not be awarded.

9.5 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 Brand Guidelines

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

The Applicant agrees that the NZGBC may vary the terms of the Brand Guidelines by posting varied Brand Guidelines on the Website.

10.2 Reciprocal Publicity Rights

Either party may:

- (a) **(Prior to Rating being awarded):** publicise the Applicant's entry into this Agreement prior to a Certified Rating or Performance Rating being awarded, but must only do so using the phrase "targeting a Green Star Certified Rating" or "targeting a Green Star Performance Rating".
- (b) **(Articles or papers):** if a Certified Rating or Performance 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;

- (c) **(Commercial promotions):** if a Certified Rating or Performance Rating is awarded to the Applicant, engage in commercial promotions relating to the Applicant's participation in the Independent Assessment;
- (d) **(Publicity relating to outcome):** if a Certified Rating or Performance Rating is awarded to the Applicant, publicise the outcome of the Independent Assessment; and
- (e) **(Target not achieved):** if the Certified Rating or Performance Rating achieved by an Applicant is less than that applied for, the NZGBC may only publicise the outcome of the Independent Assessment with the prior approval of the Applicant.

10.3 NZGBC Publicity Rights

Subject to clause 10.4, the Applicant agrees that the NZGBC may provide special recognition for the Project if, in the NZGBC'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. This clause 10.4 will not apply to NZGBC sharing Certified Ratings or Performance Ratings with third parties in the proper course of NZGBC's or GBCA's business, including for the purpose of encouraging uptake of ratings.

10.5 Tenants' Limited Publicity Rights

Tenants of a base building Project that has achieved a Certified Rating or Performance Rating may publicise that they lease space within the Project with a Certified Rating or Performance Rating but only by saying that they occupy a "space within a project with a Green Star Certified Design/ Built rating of [4/5/6] stars or a Green Star Performance rating of [1/2/3/4/5/6]" or by using similar wording previously approved by the NZGBC.

GENERAL OPERATION

11 TERMINATION

11.1 Termination by the NZGBC

The NZGBC 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) **(Breach):** is in breach of any term of this Agreement and:
 - i. if that breach is capable of remedy, has not remedied the breach within 20 business days of notice to do so; or
 - ii. that breach is incapable of remedy.
- (b) **(Design Review Certified Rating only):** has achieved a Design Review Certified Rating and, in the reasonable opinion of the NZGBC, has no intention of seeking the award of an As Built Certified Rating for the Project;
- (c) **(Misleading and deceptive conduct):** engages in any conduct in relation to the Rating Tool, the Independent Assessment or the Trade Mark which in the NZGBC's reasonable opinion is likely to, or does, mislead or deceive;
- (d) **(Transfer of Agreement without approval):** sells, transfers, assigns or otherwise disposes of the Rights other than in accordance with clause 6;
- (e) **(Delay by Applicant):** in the sole opinion of the NZGBC, has delayed the Independent Assessment for the Certified Rating or Performance Rating by

- any one or more acts or omissions which results in the Certified Rating or Performance Rating not being completed by:
- i. the date occurring 12 months following the date on which the NZGBC notifies the Applicant the outcome of Round 1; or
 - ii. if the Rating Tool is Green Star - Design & As Built NZ, Green Star - Interiors NZ, Green Star NZ Office Interiors V3 or Green Star NZ V3, 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) Or 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 liability under, this Agreement, except for a rectifiable default, which is rectified within 20 business days following written notice from the NZGBC 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 NZGBC under or in connection with this Agreement
 - iii. **(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;
 - iii. **(Receivership)**: the appointment of any receiver over, or possession taken by any secured party of, any asset of the Applicant;
 - iv. **(Insolvency)**: cessation of payment generally by the Applicant or the inability of the Applicant, or the NZGBC reasonably deciding the Applicant is unable, to pay all its debts as and when they become due and payable;
 - v. **(Administration)**: the appointment of any administrator of the Applicant;
 - vi. **(Liquidation)**: any legal action, not being in the reasonable decision of the NZGBC a disputed action, being commenced, judicial order made or resolution passed for the liquidation of the Applicant;
 - vii. **(Debt arrangement)**: the creation by the Applicant of any debt arrangement with its creditors generally or any class of creditors;
 - viii. **(Business cessation)**: the cessation or proposal for cessation of business generally by the Applicant;
 - ix. **(Act of bankruptcy)**: the Applicant, if a natural person, committing an act of bankruptcy or compounding with his or her creditors;
 - x. **(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
 - xi. **(Insolvency Act 2006)**: 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 the Insolvency Act 2006 with his or her creditors.

11.2 Termination by the Applicant

The Applicant may terminate this Agreement at any time by giving 20 business days' written notice to the NZGBC. If the Applicant terminates this Agreement it will have no claim for reimbursement of any Fee paid or payable to the NZGBC under this Agreement.

11.3 Consequences of termination

The following provisions shall apply on termination of this Agreement:

- (a) **(NZGBC's rights reserved)**: Any termination of this Agreement will not prejudice the NZGBC's rights to seek and obtain damages for any breach of

this Agreement. The NZGBC 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 NZGBC 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 NZGBC 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 or Performance Rating Certificate (if any) from public display;
- (c) cease to promote or otherwise refer to the Certified Rating or Performance Rating; and
- (d) do such further things as may be reasonably required by the NZGBC to protect the GBCA and the NZGBC'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 AND EXCLUSION OF LIABILITY

- (a) **(Liability limited to resupply)**: The liability of the NZGBC 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 NZGBC 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.

Without limiting this clause 12 or any other part of this Agreement, in no event will the NZGBC be liable for any indirect, special, incidental, non-natural, economic or consequential damage or damages, or any loss of profit howsoever arising in connection with this Agreement.

- (b) **(Exclusion of liability)**: To the maximum extent permitted by law, the NZGBC excludes all liability and responsibility, including without limitation for negligence, for any inaccuracy within the relevant Rating Tool, the Submission Guidelines or any related documentation and makes no warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose or any other warranties under Law, 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 Rating Tool, the Submission Guidelines 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.

13 CONFIDENTIALITY

- (a) **(Confidential information):** Subject to any other provision of this Agreement, each of the NZGBC and the Applicant will keep confidential all the Confidential Information provided to it.
- (b) **(Limited disclosure):** The NZGBC 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. such disclosure is necessary to perform the obligations under this Agreement and provided the recipient of the Confidential Information agrees to keep it confidential;
 - iv. the NZGBC or the Applicant can demonstrate that it knew the Confidential Information before the other party to this Agreement disclosed it to it.
- (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 Fee and other monetary sums referred to or calculated in accordance with this Agreement.

14.2 Taxable Supply

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

15 COSTS

- a) Each party shall pay its own costs in relation to:
 - i. **(Documentation):** the negotiation, preparation, execution, performance, amendment or registration of, or any notice given or made; and
 - ii. **(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.
- b) The Applicant shall pay the costs of the NZGBC in relation to the negotiation or amendment of this Agreement, or any agreement or document executed or effected under this Agreement.

16 DUTIES

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

17 ASSIGNMENT

The Applicant shall not transfer any right or liability under this Agreement without the prior consent of the NZGBC (such consent not to be unreasonably withheld or delayed).

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 Meeting to attempt to resolve dispute

If a dispute arises under this Agreement, either party may at any time give written notice to the other requesting that a meeting take place to seek to resolve the dispute. Nominated senior representatives of both parties must meet within 5 business days of the notice and endeavour to resolve the dispute in good faith. If such meeting does not take place or if after 5 business days of the meeting the dispute remains unresolved, the dispute is referred to mediation.

19.2 Appointment of mediator

If the parties do not agree on a mediator, then the mediator must be appointed by the President of the New Zealand Law Society.

19.3 Mediator's fee

Unless the parties agree otherwise, the mediator's fee and any other costs of the mediation itself (such as for venue hire or refreshments) must be shared equally between the parties, but the parties must each pay their own costs of preparing for and participating in the mediation (such as for travel and legal representation).

19.4 Negotiated agreements

The parties must do whatever is reasonably necessary to put into effect any negotiated or mediated agreement or other resolution of the dispute.

19.5 Other remedies

If the dispute is not resolved within either three months from the date of a notice delivered in accordance with clause 19.1, or any other period agreed by the parties, then either party is free to pursue its rights at law.

19.6 Performance of obligations

During a dispute, each party must continue to perform its obligations under this Agreement.

19.7 Interlocutory relief and right to terminate

Clauses 19.1 and 19.5 do not restrict or limit the right of either party to obtain interlocutory relief, or to immediately terminate this Agreement where this Agreement provides such a right.

20 GOVERNING LAW

This Agreement shall be governed by and construed under the law of New Zealand.

20.1 Jurisdiction

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

20.2 Submission

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

21 GENERAL PROVISION

21.1 Amendments,

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

21.2 Third Parties

This Agreement shall confer rights only upon a person expressed to be a party, and not upon any other person, including an Applicant Agent.

21.3 Applicant Agent

If an Applicant Agent has entered this Agreement, the NZGBC:

- (a) has no obligation to render any decision or provide any other information with respect to the certification of any Project until the Applicant provides a Confirmation of Agent's Authority form to the NZGBC;
- (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.

21.4 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.

21.5 Further Assurance

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

21.6 Waivers

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

21.7 Remedies

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

21.8 Severability

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

21.9 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.

22. EXECUTION

By checking the box in the Registration Form 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, and Fees, 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, the NZGBC 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 and Design 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 Rating Tools: <i>Green Star - Design & As-Built NZ</i> <i>Green Star - Interiors NZ</i> <i>Green Star - NZ V3</i> <i>Green Star - NZ Office Interiors V3</i>
Green Star - Performance Ratings	Expires 3 years and 90 days after the date of the Performance Rating Certificate.

SCHEDULE 2 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 New Zealand Green Building Council's (**NZGBC's**) receipt of an executed copy of the same via email to greenstarnz@nzgbc.org.nz and your receipt of written notice from the NZGBC 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 NZGBC 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

Project 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

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:

<hr/>		<hr/>
Purchaser		Purchaser's Representative – if Purchaser is an Organisation
<hr/>		
Address		
<hr/>		
<hr/>	<hr/>	<hr/>
City	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) The NZGBC will recognise the Purchaser as the Owner's successor in interest to the Agreement, and the NZGBC 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 NZGBC accepting this Assignment, the Owner agrees to discharge and release the NZGBC from any and all obligations to the Owner, and waives any and all rights and/or claims it may have against the NZGBC as of the NZGBC'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 the NZGBC, 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 and Exclusion of Liability), 13 (Confidentiality), 19 (Dispute Resolution) and 20 (Governing Law); and
 - ii. those clauses obliging the Owner to defend and indemnify the NZGBC 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

Purchaser

Signature of Owner

Signature of Purchaser

Name

Name

Title

Title

Date

Date