

NZGBC Green Star Certification Agreement

Version June 2025

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New Zealand Green Building Council of Certification Agreement

This Certification Agreement (**Agreement**) is entered into by the Applicant (as defined below) and the New Zealand Green Building Council (**NZGBC**), a non-profit company with a registered office at Level 2, Tower 1, 205 Queen St, Auckland, 1010,

and constitutes a binding agreement between the Applicant, on the one hand, and NZGBC, on the other hand.

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

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

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 New Zealand Green Building Council (NZGBC) Green Star Certification Process (**Process**) to which the Applicant (and the Applicant's Agent, if any) are bound.
- B. The Green Star Rating Tools have been developed by the Green Building Council of Australia (GBCA) to evaluate the design, construction and operation of sustainable buildings, fit outs and communities. Green Star certification demonstrates leadership, innovation, environmental stewardship and social responsibility. The GBCA has granted the NZGBC an exclusive license to use, and modify the Green Star rating system, the Rating Tools and their associated intellectual property for use in New Zealand.
- C. To earn a Certified Rating, Designed Assessment or Performance Rating under the Green Star Rating Tools, the Applicant must meet specified requirements as defined in the Submission Guidelines and a Certified Assessor must award Points to the Project to attain a Green Star Rating or Performance Rating.
- D. The Applicant wishes to apply for a Certified Rating or Performance Rating of the Project against the Rating Tool, on the land and at the building address specified in the Registration.
- E. The NZGBC has agreed to commission one or more Certified Assessors to carry out an Independent Assessment of the Project against the criteria set out in the Submission Guidelines.
- F. Subject to full compliance by the Applicant with its obligations under this Agreement, the Certified Assessor(s) will complete the Independent Assessment and recommend the number of Points to be awarded to the Applicant. These Points will then be used to determine the Project's Green Star Rating or Performance Rating.
- G. If the Applicant receives a Certified Rating, Designed Assessment or Performance Rating it will be entitled to a limited licence to use the Trademark and publicise its Certified Rating, Designed Assessment or Performance Rating. NZGBC will publicise the Registration for and grant of Certified Rating, Designed Assessment or Performance Rating as part of the Process.
- H. This Agreement sets out the terms on which the certification will take place and the basis on which the Applicant may promote its Certified Rating, Designed Assessment or Performance Rating and use the Trademark and associated logos.

1. INTERPRETATION

1.1 Definitions

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

“Agreement” means this Agreement.

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

“Applicant Data” means any data provided by an Applicant or its Agent that relates to the Project and is provided for Registration and other purposes during the Process including to attain or maintain a Green Star Rating or Performance Rating.

“Assessment Fee” means the fee payable to the NZGBC for the Independent Assessment which can be found on the NZGBC website.

“Business Day” means a day which is not Saturday, Sunday or a public holiday in New Zealand.

“Certification Advisor” means an NZGBC employee or advisor designated as the “Certification Advisor.”

“Certified 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 Accredited Professional” examination, and having undertaken appropriate and ongoing education.

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

“Certified Rating Certificate” means a certificate to be awarded to the Applicant by the 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 4, to be used according to clause 6.

“Confidential Information” means all trade secrets, ideas, know-how, concepts, methods of working, management, operations, procedures, financial and business information whether in writing or otherwise relating to either party to this Agreement, but does not include information that is deidentified, aggregated or in the public domain for reasons other than unauthorised disclosure.

“Confirmation of Agent’s Authority” means the authority completed as part of the Registration under which the Applicant appoints the Agent to represent it, to be used according to clause 21.5.

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

“Data Objectives” means the proposed use of Applicant Data by NZGBC as identified in Annexure A from time to time.

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

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

“Designed Assessment” means an assessment by NZGBC or by a Certified Assessor of the Project, prior to its practical completion, against criteria contained in the Submission Guidelines, which results in the award of a Designed Assessment Certificate, entitling the Applicant to a limited licence to use the Trademark and publicise the Applicant’s Designed Assessment.

“Designed Assessment Certificate” means a certificate to be awarded to the Applicant by the NZGBC to provide confirmation of any Designed Assessment achieved.

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

“Fee” means:

- a) the Assessment Fee.
- b) fees payable by the Applicant for inquiries, Technical Question and Innovation Requests.

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

“NZGBC Representative” means the NZGBC employee/s designated by the NZGBC to project manage the Process and Independent Assessment.

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

“GST” includes goods and services tax.

“Independent Assessment” means an independent assessment by a Certified Assessor of the Project.

“Law” includes any requirement of any statute, regulation, proclamation, ordinance or by-law, present or future.

“Marketing Brand Guidelines” is the defined term for the purposes of this Agreement to describe the Marketing Brand Guidelines (also referred to as Brand Guidelines or Brand Tool Guidelines) for Green Star Projects as displayed on the Website to be used by Applicants in the promotion of the Designed Assessment, Certified Rating or Performance Rating and of Projects registered for a Green Star Rating.

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

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

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

“Project” means the proposed building, refurbishment or extension, design, fit out, or community, existing operational building or Portfolio specified in the Applicant’s Registration.

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

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

“Privacy Laws” means the Privacy Act 2020 and any other applicable privacy or data protection laws, regulations or guidelines.

“Process” means the NZGBC Green Star Certification Process relating to any Rating Tool.

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

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

“Registration Date” means the date designated as such by the NZGBC which will be on or about the date the NZGBC receives both the Applicant’s Registration accepting this Agreement and the Assessment Fee.

“Rights” has the meaning in clause 6.

“Services” means:

- a) the Independent Assessment.
- b) any inquiries, Technical Questions or Innovation Requests; 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, as varied from time to time.

“Tax Invoice” means an invoice in the format and with the content required by the Goods and Services Tax Act 1985 or as otherwise required by Law.

“Taxable Supply” has the meaning given to that term in the Goods and Services Act 1985 as amended from time to time.

“Technical Question or Innovation Request” means a request for a response to a Technical Question or Innovation Request, made by the Applicant in accordance with clause 5.2(b);

“Trademark” means the trademark or marks set out in Annexure B to this Agreement licensed to GBCA and/or NZGBC, including all four-, five- or six-star variants and any registered or unregistered trademarks and any Trademarks used or applied for from time to time.

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

“Website” means the website of the NZGBC located at www.nzgbc.org.nz

1.2 Interpretation Rules

These rules of interpretation apply to this Agreement:

- a) **headings:** headings and subheadings are for convenience only and shall not affect interpretation, except for specified cross-references.
- b) **plural:** words denoting the singular number include the plural, and the converse also applies.
- c) **gender:** words denoting any gender include all genders.
- d) **parties:** any reference to a party to any agreement or document includes its successors and permitted assigns and substitutes by way of assignment or novation.
- e) **amendments:** any reference to any agreement or document includes that agreement or document as amended at any time.
- f) **provisions:** any reference to a provision is a reference to a clause of, or schedule or annexure to, this Agreement including each subclause, paragraph and subparagraph of that provision.
- g) **references:** any reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this Agreement.
- h) **(cross-references):** any reference to a provision described, prefaced or qualified by the name, heading or caption of a provision of this Agreement means a cross-reference to that provision.
- i) **specifics:** any specific reference to or listing of agreements, documents, actions, facts, liabilities or any other items following the word “including” by way of example, or specification of or in relation to any preceding words or provision shall be without

limitation and shall not exclude application to other items, and

- j) **trustee company:** To the extent that the Applicant is a trustee company, it may have the benefit of Schedule 3 provided that the Applicant indicates its desire to benefit from Schedule 3 in the appropriate section of the Registration form.

1.3 Trademark

- a) **Trademark:** Use of the relevant trademark is subject to the Copyright Act 1994. In the event of conflict or inconsistency between the provisions of this Agreement in relation to the use of a trademark, and the Copyright Act, the provisions of the Copyright Act will govern and prevail.
- b) **(Amendments):** The Applicant will perform any action necessary to amend any conflicting provision of this Agreement upon request by NZGBC.

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 Fees, 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:** Each of the NZGBC and its employees, agents and contractors shall act in the capacity of an independent contractor, between the NZGBC and the Applicant, in the performance of any obligations under this Agreement.
- b) **Exclusions:** This Agreement will not create, or be construed to create any express or implied relationship between the NZGBC, its employees, agents and contractors and the Applicant of:
 - (i) employment.
 - (ii) principal and agency.
 - (iii) partnership; or joint venture.
- c) **Contractual freedom:** This Agreement will not prohibit the NZGBC from executing any agreement with any third person relating to the supply or acquisition of services or goods and/or services,

whether in or similar to the Services to be provided under this Agreement or otherwise, as decided by the NZGBC.

3. PAYMENT

3.1 Applicant liability

The Applicant shall be liable to pay to the NZGBC:

- a) **Assessment Fee:** the Assessment Fee for the Independent Assessment.
- b) **Inquiry Fees:** Fees for any Technical Question or Innovation Request made by the Applicant as specified on the Website.

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 Tax Invoice.
 - (ii) the Services for which the Fee is due.
 - (iii) the date of supply for 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

the GST amount of the total amount of the Payment Claim.

- c) **Tax invoice:** The Payment Claim shall comply with the Goods and Services Tax Act 1985 relating to the form or content of Tax Invoices, in addition to any other requirement of this provision.

3.3 Fee Payment

- a) **Payment:** The Applicant must pay any Fee on or before the Payment Date.
- b) **Withholding of Assessment:** The NZGBC may withhold the results of the Independent Assessment until all Fees due and owing by the Applicant to the NZGBC have been paid.
- c) **Rights Cumulative:** The Applicant acknowledges that withholding of the results of the Independent Assessment pursuant to paragraph (b) 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).

- d) **Method:** Any payment to be made by any party under this Agreement shall be made in cleared funds unless otherwise agreed between the parties in writing before the Payment Date.

4. INDEPENDENT ASSESSMENT

- a) **Applicant's undertakings:** The Applicant agrees that:
 - i. it will provide the NZGBC with all information specified in the Submission Guidelines and reasonably requested by the Certified Assessor or NZGBC to complete the Independent Assessment, including, in relation to the Performance Rating Tool, the material set out in Schedule 2;
 - ii. subject to any reasonable occupational health and safety requirements of the Applicant, it will provide access to the Certified Assessor or NZGBC to the Project, upon not less than 3 days' notice by the NZGBC to the Applicant, for the purposes of collecting information to allow the Independent Assessment to be performed.
 - iii. the NZGBC has the right to conduct audits of the Applicant's advice to its employees, consultants and contractors regarding the Applicant's commitment to this Agreement; and
 - iv. it will comply with all the terms and conditions contained in the Submission Guidelines and any additional eligibility criteria relevant to the nominated Rating Tool specified on the Website at the date of this Agreement.
- b) **NZGBC's undertakings:** The NZGBC agrees that following the Registration Date it will:
 - i. provide the Applicant with a summary of the documentation required for the Independent Assessment based on Submission Guidelines.
 - ii. provide a NZGBC Representative to project manage the Independent Assessment.
 - iii. if all relevant criteria have been fulfilled and the Applicant is not in breach of this Agreement (including non-payment of Fees), the NZGBC will award the Applicant a Designed Assessment evidenced by a Designed Assessment Certificate.
 - iv. upon receiving and considering the recommendation of the Certified Assessor, if all relevant criteria have been fulfilled and the Applicant is not in breach of this Agreement (including non-payment of Fees), the NZGBC will award the Applicant a Certified Rating evidenced by an email confirming the Certified Rating; and

- v. use all reasonable endeavours to comply with any timeframes set out on the NZGBC Website in relation to the Certification Process.

5. TECHNICAL QUESTIONS/INNOVATION REQUESTS

5.1 Mode of Request for Technical Questions /Innovation Requests:

The Applicant must make all inquiries via the Green Star team at greenstarnz@nzgbc.org.nz or as set out on the Website.

5.2 Technical Questions/Innovation Request

- a) **Request by Applicant:** In some cases, an Applicant may have clearly satisfied the stated intent of a Credit through a solution that does not allow that requirement to be demonstrated through the stated compliance requirements in the Submissions Guidelines and in such cases the Applicant may submit a Technical Question or Innovation Request.
- b) **Technical Questions/Innovation Request procedure:** Any request for a response to a Technical Question must be in accordance with the following procedure:
 - (i) the Applicant must first consult the Submission Guidelines and any Technical Clarification rulings on the Website for guidance and follow these.
 - (ii) if the Submission Guidelines or Technical Clarification rulings do not adequately address the issue, then the Applicant may lodge a Technical Question/Innovation Request to the Green Star team by email at greenstarnz.org.nz or via the website.
 - (iii) each Technical Question/Innovation Request will be invoiced for payment of the relevant Fee as per the fee schedule on the NZGBC website.
 - (iv) determination of the Technical Question/Innovation Request will be made by NZGBC solely on the information provided by the Applicant in the Technical Question/Innovation Request; and
 - (v) any further information submitted by the Applicant following a determination of the Certification Advisor will constitute a new Technical Question/ Innovation Request and the Applicant will be liable for a further Fee.

6. TRANSFER OF RIGHTS IN THE PROJECT

6.1 Pre-Certification Transfers

If the NZGBC has not yet awarded a Designed Assessment or Certified Rating, and the Applicant sells, transfers or otherwise disposes of its rights in relation to the Project and/or the Design ("**Rights**"), the Applicant must:

- a) **notification of transfer:** notify the 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, (in the form set out in Schedule 4) subject to the NZGBC's written consent; or
 - ii. negotiating a new agreement with the NZGBC,

and the NZGBC 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 NZGBC 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 NZGBC pursuant to clause (d) above, or a new certification agreement is not entered into between the NZGBC and the Purchaser within 60 days of the NZGBC notifying the Applicant and the Purchaser of its decision to assign or enter into a new agreement under clauses (d) or (e) respectively, terminate this Agreement, and

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

6.2 Post Certification Transfers

In the event the NZGBC has awarded a Designed Assessment or Certified 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, in the form set out in Schedule 4) 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. LICENCE OF TRADEMARK

7.1 Applicability

This clause 7 only applies if the Applicant is awarded a Designed Assessment or Certified Rating by the NZGBC

7.2 Trademark sub-licence

The NZGBC grants to the Applicant for the duration of the Validity Period, a non-transferable, non-exclusive licence to use the Trademark showing the Designed Assessment or Certified Rating solely in relation to the Project and the display, promotion and advertisement of the Project, in accordance with the Brand Marketing Guidelines.

7.3 Conditional transferability

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

7.4 Cessation of use of the Trademark

- 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 Trademark 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 Trademark.
- 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 Trademark.
 - (ii) remove the Certified Rating Certificate and/or Designed Assessment Certificate (if any) from public display; and

- (iii) cease to promote or otherwise refer to the Designed Assessment and/or Certified Rating.

7.5 Applicant Responsibilities on Expiry of Trademark Licence or Termination of Agreement

Upon expiry of the Trademark licence under clause 7.2 the Applicant shall:

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

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

The Applicant acknowledges that if the Applicant is not awarded a Designed Assessment or Certified Rating the Applicant will not be granted a sublicense under clause 7.2 to use the Trademark.

7.7 Valuable Rights

- a) The Trademarks constitute valuable intellectual property and are protected by Law. The Applicant acknowledges and agrees that any unauthorised use of the Trademarks constitutes both infringement of NZGBC's license of the intellectual property and a breach of this Agreement.
- b) All rights not expressly granted under this Agreement are reserved by NZGBC, and no licence is granted for the use of the Trademarks for any purpose beyond the uses set forth in this clause or use of any other intellectual property. The Applicant acknowledges and affirms the NZGBC license of the Trademarks 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 Trademarks and the goodwill associated with them shall inure to the sole benefit of NZGBC.
- c) The Applicant acknowledges that the Trademarks and the associated goodwill possess special, unique and extraordinary characteristics, which make difficult the assessment of monetary damages that NZGBC would sustain because of unauthorised use of the Trademarks. The Applicant recognises that 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 NZGBC, nor shall it be deemed an election of remedies by NZGBC.

8. INTELLECTUAL PROPERTY RIGHTS

- a) **Licence of Applicant rights:** The Applicant retains all copyright and other proprietary rights in the Applicant Data ("Applicant IP"). The Applicant grants to the NZGBC a royalty free, perpetual, non-exclusive licence (with a right of sublicense) in the Applicant Data. NZGBC may use, reproduce, adapt, publish, communicate or exploit the Applicant IP in accordance with the Data Objectives, including to create, maintain and use a database relating to the Registration and Certification of projects.
- b) **Retention of all rights:** The Applicant agrees that the NZGBC retains all copyright and other proprietary rights in the Rating Tool, Submission Guidelines, NZGBC's Confidential Information, the Trademark and any databases created in conduct of the Process ("NZGBC IP") and agrees not to use NZGBC IP except in accordance with this Agreement and the Brand Marketing Guidelines.
- c) **No unauthorised display of documents:** The Applicant agrees that it will not reproduce, display or distribute any 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.
- d) **Unauthorised use:** Unauthorised use of 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.
- e) **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 & INDEMNITIES

9.1 Warranties and Undertakings

- a) The Applicant warrants and undertakes that:
 - (i) **no interference with Trademark:** it shall not represent that it owns any part of the Trademark nor apply for ownership of the Trademark, or oppose any application by the NZGBC for registration of the Trademark 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 right, title and interest in the Trademark.
 - (iii) **accurate information:** the information the Applicant provides to the Certified Assessor, the NZGBC, its employees, agents and independent contractors (if any) under this Agreement including Applicant Data is true, accurate and complete in all respects and the Applicant has the right to provide the Applicant Data under this Agreement; and
 - (iv) **relevant authority:** it has the authority of all relevant persons to enter into this Agreement and to apply for the Independent Assessment and acquire the Trademark licence.
- b) **Designed Assessments only:** should a Designed Assessment be awarded, the Applicant agrees:
 - (i) it will not promote such rating in any way that gives the impression that the Designed Assessment applies to any part of the Project apart from the Design.
 - (ii) the right to promote the Designed Assessment is conditional on the Applicant proceeding to seek an As Built rating.
 - c) **Notification of Date of Practical Completion:** the Applicant agrees to notify the NZGBC of the Date of Practical Completion within 3 months after such date; and
 - d) **Project only:** should a Certified Rating be awarded, the Applicant agrees it will not promote or use the Certified Rating for the Project in any way so that it may be considered (or the NZGBC notifies the Applicant) that the Certified Rating applies to any other building or fit out apart from the Project.

9.2 Acknowledgement

- a) The Applicant acknowledges that NZGBC is a non-profit organisation engaged in the effort to lessen the environmental impacts of buildings and communities, and that the Green Star Rating Tools, while regulated by specific policies and standards developed by 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 NZGBC or a Certified Assessor have any liability because of any decision to grant or not to grant any Designed Assessment or Certified Rating Certificate to the Project (or any portion of the Project) for any reason. For section 12 of the Consumer Guarantees Act 1993, 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) Designed Assessment, Certified or Performance Rating Certificates are not a representation, and do not mean that the Project (or any precinct, individual building(s) or interior space(s) comprising the Project) is structurally sound or safe, constructed in accordance with applicable laws, regulations or codes, free of mold or mildew, or free of volatile organic compounds or allergens or toxins, or that the Project (or any individually registered building interior space, community project comprising the Applicant's Project) shall achieve a relative or specified level of carbon or energy efficiency, performance, or use of renewable, recycled or recyclable resources as a result of any Certified Rating Certificate;
 - (ii) Any grant of Certified, Designed Assessment or Performance Rating Certificates does not mean that NZGBC endorses, verifies, or agrees with any Project information that has been provided or represented to it.
 - (iii) Any grant of Certified, Designed Assessment 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, Designed Assessment or Performance Rating Certificates does not guarantee the Applicant the satisfaction of any mandates or requirement for the Project to be constructed "Green".

9.3 Release and Indemnity

Release and indemnity: Except to the extent directly caused or contributed to by any wrongful act, omission, negligence or default of the NZGBC, its officers, employees, agents, contractors (including any Certified Assessor or any Certification Advisor), and subject to the terms of this Agreement, upon signing this Agreement, the Applicant releases and indemnifies the NZGBC, its officers, employees, agents, contractors (including any Certified Assessor or any Certification Advisor) and agrees to keep them indemnified from and against any claims, demands, liabilities, losses, damages, costs or expenses arising out of its application under the Process, the NZGBC's assessment of its application, the Independent Assessment, the Green Star Rating issued or any use it may make of these, or any exercise of its rights (if any) to publicise information under this Agreement and causes of action for any injury, loss, destruction or damage (including, without limitation, equitable relief and economic loss) that the Applicant may

now or after this date have a right to assert against such parties as a result of the Applicant's use of, or reliance on, the Rating Tool, the Submission Guidelines or any related documentation.

9.4 Survival of Releases and Indemnity

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

10. PUBLICITY

10.1 Compliance with Marketing Brand Guidelines

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

10.2 Reciprocal Publicity Rights

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

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

10.3 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

Subject to clause 10.5 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 the content of other forms of publicity or promotion, provided that such approval shall not be unreasonably withheld or delayed.

10.5 Announcements

The NZGBC will automatically promote all Registrations and any award of a Certified Rating, Designed Assessment or Performance Rating in the Green Star

Directory on the Website as part of the Process. In the case of Performance Ratings, star ratings will only be noted for achievement levels of 4, 5 or 6 stars.

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 written notice to the Applicant, if the Applicant:

- a) Breach: is in breach of any term of this Agreement and if that breach is capable of remedy, has not remedied the breach within 10 days of notice to do so.
- b) Designed Assessment only: has achieved a Designed Assessment 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 conduct involving NZGBC: engages in any conduct in relation to the Rating Tool, the Independent Assessment, or the Trademark which in the NZGBC's reasonable opinion is likely to, or does, mislead or deceive.
- d) transfer without approval sells, transfers, assigns or otherwise disposes of the Rights other than in accordance with clause 6; or
- e) delay by Applicant: in the sole opinion of the NZGBC, has delayed the Independent Assessment for the Certified Rating by any one or more acts or omissions which results in the Independent Assessment not being completed by:
 - (i) the date occurring 12 months following the date on which the NZGBC notifies the Applicant the outcome of the initial assessment; or
 - (ii) if the rating tool is Green Star – Design & As Built, or Green Star Buildings, or Green Star – Interiors, the date occurring 24 months after the Date of Practical Completion; or
 - (iii) the date occurring 3 years from the date of this agreement; or
- f) any of the following events occur by or in relation to the Applicant:
 - (i) performance default: any default under this Agreement resulting from failure by the Applicant to perform any provision of, or obligation under, this Agreement, except for a rectifiable default, which is rectified within 10 days following written notice from the 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) administration: the appointment of any administrator of the Applicant.
- (iv) 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.
- (v) business cessation: the cessation or proposal for cessation of business generally by the Applicant.
- (vi) insolvency: the Applicant, if a natural person, becoming the subject of a sequestration order or entering a composition, deed of assignment or deed of arrangement with his or her creditors; and

11.2 Termination by the Applicant

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

11.3 Consequences of termination

The following provisions shall apply on termination of this Agreement:

- a) **NZGBC 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, 9 and 10 to 20 of this Agreement survive termination; and
- 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 all use of the Trademark.
- b) remove the Certified Rating Certificate and/or Designed Assessment Certificate (if any) from public display.
- c) cease to promote or otherwise refer to a Designed Assessment and/or Certified Rating; and
- d) do such further things as may be reasonably required by the NZGBC to protect the NZGBC's right, title and interest in the Trademark and/or the Rating Tool.

11.5 Reciprocal responsibilities on termination

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

12. LIMITATION OF LIABILITY

- a) **Exclusion of liability:** To the maximum extent permitted by law, the NZGBC excludes responsibility, including without limitation for negligence, for any inaccuracy within the Rating Tool, the Submission Guidelines, the Independent Assessment or any related documentation and makes no warranty, expressed or implied, including any warranty of merchantability and fitness for a particular purpose, nor assumes any legal liability or responsibility to the Applicant or any third parties for the accuracy, completeness, or use of, or reliance on, any information contained in the Rating Tool, the Submission Guidelines, the Independent Assessment or any related documentation, or for any injuries, losses or damages (including, without limitation, equitable relief and economic loss) arising out of such use or reliance.
- b) **Limitation of damages:** In no event will the NZGBC 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 NZGBC for any default in the performance of its obligations to supply any Services or thing under this Agreement shall be limited, in the discretion of the 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.
- c) **Statutory protection:** Nothing in this clause 12 operates to exclude, restrict or modify the application

of any provision of the Consumer Guarantees Act 1993, the Fair Trading Act 1986 or any equivalent legislation, or any rights conferred, or liability implied by such provisions.

- d) **Monetary Limit:** If, notwithstanding this clause 12, the Applicant is proven at law to have a valid claim for damages against the NZGBC (it being the intention that no such damages may be recovered) then, to the maximum extent permitted by law, the NZGBC's total liability to the Applicant under this Agreement will be limited to the resupply of the services or thing, or payment to the Applicant for the resupply of the Services or thing.

13. CONFIDENTIALITY

- a) **Confidential information:** Subject to any other provision of this Agreement, each party will keep confidential all the Confidential Information provided to it.
- b) **Limited disclosure:** The NZGBC and the Applicant may disclose Confidential Information of the other, if:
 - (i) such disclosure is required by Law.
 - (ii) such disclosure is necessary to perform the obligations under this Agreement and provided the recipient of the Confidential Information agrees to keep it confidential including disclosure to other rating or certification bodies agreed by the Applicant.
 - (iii) the Confidential Information is or becomes generally available in the public domain through no breach of this Agreement; or
 - (iv) the NZGBC or the Applicant can demonstrate that it knew the Confidential Information before the other party to this Agreement disclosed such Confidential Information.
- c) **Survival:** This clause 13 shall continue to apply after the Termination of the Agreement.

14. GST

14.1 Fees exclusive of GST

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

14.2 Taxable Supply

The Applicant must pay to the 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 for the relevant supply at the rate prescribed by Law from time to time for GST.

15. COSTS

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

16. DUTIES

Not Used

17. ASSIGNMENT

17.1 Assignment with consent

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

17.2 Change of Ownership Agreement

Where the Applicant proposes to sell, transfer or otherwise dispose of any or all its rights in relation to the Project or the Design the Applicant must first deliver to NZGBC a copy of the Change of Ownership Agreement in the form set out in Schedule 4 of this Agreement, duly signed by the proposed new owner of the Applicant's rights.

18. NOTICES

18.1 Form

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

18.2 Service Method

Service of communication by mail will be deemed to have been made on the second Business Day after posting. Service by personal delivery will be deemed to have been made 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 made, when the email is opened and receipt acknowledged except where the time of dispatch is not between 9:00am 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 day.

19. DISPUTE RESOLUTION

19.1 Notice of Dispute

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

19.2 Mediation

- a) If the dispute is not resolved within 60 Business Days of notification, either party may refer the dispute to mediation in accordance with this clause 19.2 the other party must submit to the mediation.
- b) The mediator will be a person who is independent of the parties and who is appointed by agreement of the parties or, failing agreement within fifteen Business Days from the day on which the matter has been referred to mediation, by the President of the New Zealand Law Society.
- c) Any mediation meetings or proceedings under this clause must be held in Auckland.
- d) Unless otherwise agreed, the remuneration of the mediator will be borne equally by the parties. Each party must pay its own costs of the mediation.
- e) All communications during the mediation are confidential and must be treated as made during compromise and settlement negotiations for the purposes of the applicable rules of evidence.
- f) It is a condition precedent to the right of either party to commence arbitration or litigation, that it has first offered to submit the dispute to mediation.

19.3 Commencing Proceedings

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

19.4 Continuation of Rights and Obligations

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

20. PRIVACY

In performing this Agreement, each party will:

- a) comply with all relevant laws, including but not limited to Privacy Laws.
- b) do all things necessary to comply with the Privacy Laws including the New Zealand Privacy Act 2020, in relation to any personal information which it collects, receives, holds, discloses, or in any way deals within the course of performing this Agreement.
- c) notify the other party immediately if it becomes aware of a potential data breach affecting that party's personal information and agrees that for the purposes of data breach notification requirements under the Privacy Laws, the NZGBC will decide whether the data breach is an eligible data breach giving rise to notification obligations and the form and method of the notification after meaningful consultation with the other party; and
- d) ensure that any agents or sub-contractors it appoints to perform any of its obligations under this Agreement are subject to and comply with the same obligations as set out under this clause.

21. GOVERNING LAW

21.1 Applicable Law

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

21.2 Jurisdiction

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

21.3 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 it and its property.

21.4 Third Parties

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

21.5 Applicant Agent

If an Applicant Agent has entered this Agreement, NZGBC:

- a) has no obligation to render any decision or provide any other information with respect to the certification of any Project following Registration until the Applicant confirms they have a Confirmation of Agent's Authority by clicking the appropriate box in the application process..
- b) agrees that the Applicant is responsible for the acts and conduct of the Applicant Agent in relation to the Process.
- c) may liaise with the Applicant Agent in relation to the Process including by providing access to Project information and Applicant Data with the authority of the Applicant; and
- d) 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 Agent's Authority.

21.6 Pre-Contractual Negotiation

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter. It sets out the only conduct, representations, warranties, covenants, conditions or understandings (collectively, the 'Conduct') relied on by the parties and supersedes all earlier Conduct between the parties in connection with its subject matter. Neither party has relied on nor is relying on any other Conduct in entering into this Agreement and completing the transactions contemplated by it.

21.7 Further Assurance

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

21.8 Waivers

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

21.9 Remedies

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

21.10 Severability

Any provision of this Agreement which is invalid in any jurisdiction shall be invalid in that jurisdiction to that

extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

21.11 Joint and Several Liability

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

22. EXECUTION

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

The Applicant acknowledges that it has read and understood this Agreement and all Schedules and Annexures, all program, policies and guidelines, including the Rating Tool, Submission Guidelines, Fee Schedule, and Trademark Rule requirements, 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, 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 Ratings

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

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

Schedule 2 – Performance Rating Additional Steps

Where an Applicant is seeking a Performance Rating, using Green Star Performance v1.2, the following additional provisions apply.

INDEPENDENT ASSESSMENT FOR PERFORMANCE RATING

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

- (i) where the Applicant is seeking a Portfolio Rating, it will provide the NZGBC with a list of all the buildings to be included in the Portfolio, in the Registration.
- (ii) it will submit the First-Round documentation for assessment within 6 months of registration.
- (iii) it will submit the Second-Round documentation within 90 days of receiving results of the First-Round assessment

b) **NZGBC's undertakings:** The NZGBC agrees that:

- (i) it will, upon receiving and considering the recommendation of the Certified Assessor, if all relevant criteria has been fulfilled and the Applicant is not in breach of this Agreement, the NZGBC will issue a Performance Rating Certificate and an email confirming the Performance Rating; and
- (ii) where a Portfolio Rating is sought, upon the award of a Performance Rating for each of the buildings included in the Portfolio, if all relevant criteria have been fulfilled and the Applicant is not in breach of this Agreement, the NZGBC will award the Applicant a Portfolio Rating evidenced by an email and certificate confirming the Portfolio Rating.

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

The Applicant must either register for recertification and recertify within the Validity Period or cease use of the Trademark at the end of the Validity Period.

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

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

If the time requirements for documentation submission set out in paragraph a (ii) and (iii) are not met, NZGBC may require an extension of time fee of an amount set out on the NZGBC website.

INTERPRETATION – ADDITIONAL DEFINITIONS

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

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

“Performance Rating” means a rating of one 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;

“Second Round” means the submission by the Applicant of further documentation to demonstrate compliance with the Rating Tool in response to the initial determination of the Certified Assessor(s) in respect of the Premises issued prior to the NZGBC awarding the Performance Rating.

INDEPENDENT ASSESSMENT FOR PERFORMANCE RATING

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

- (i) it will notify the NZGBC of the Performance Period within 90 days of the date of Registration Date.
- (ii) where the Applicant is seeking a Portfolio Rating, it will provide the NZGBC with a list of all the buildings to be included in the Portfolio, in the Registration.
- (iii) it will submit First Round documentation for assessment within 6 months of the end of the Performance Period.

- (iv) it will submit Second Round documentation within 90 days of receiving results of the First-Round assessment: an
- b) **NZGBC’s undertakings:** The NZGBC agrees that:
 - (i) it will, upon receiving the recommendation of the Certified Assessor, if all relevant criteria have been fulfilled and the Applicant is not in breach of this Agreement, the NZGBC will issue a Performance Rating Certificate and an email confirming the Performance Rating; and
 - (ii) where a Portfolio Rating is sought, upon the award of a Performance Rating for each of the buildings included in the Portfolio, if all relevant criteria have been fulfilled and the Applicant is not in breach of this Agreement, the NZGBC will award the Applicant a Portfolio Rating evidenced by an email and certificate confirming the Portfolio Rating.
- c) **Trademark licence:** The NZGBC grants to the Applicant for the duration of the Validity Period a non-transferable, non-exclusive licence to use the Trademark showing the Performance Rating solely in relation to the Project and the display, promotion and advertising of the Project. The Applicant will use the Trademark in accordance with the Brand Marketing Guidelines and the Agreement.

The Applicant must either register for recertification within the Validity Period or cease use of the Trademark at the end of the Validity Period.

1. **Additional provisions:** The following provisions of the Agreement apply to Applicants for Performance Ratings with the expression *Performance Rating* replacing *Certified Rating* in those clauses:
 - (i) Clause 4 Independent Assessment
 - (ii) Clause 6 Transfer of Rights in Project.
 - (iii) Clause 7 Licence of Trademark
 - (iv) Clause 9.1(d) Warranties and Undertakings
 - (v) Clause 10 Publicity
 - (vi) Clause 11.1 (e), 11.4 (b) and (c).

Agreement, entitling the Applicant to a limited licence to use the Trademark and publicise the Applicant's Performance Rating.

“Second Round” means the submission by the Applicant of further documentation to demonstrate compliance with the Rating Tool in response to the initial determination of the Certified Assessor(s) in respect of the Premises issued prior to the NZGBC awarding the Performance Rating.

INTERPRETATION – ADDITIONAL DEFINITIONS

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

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

“Performance Rating” means a rating of one to six stars that may be awarded by the NZGBC under this

Schedule 3 – Limitation of Trustee Liability

This Schedule is only applicable to Trustees and Trustee Companies.

1. If the Applicant is a trustee, the Applicant enters and performs this Agreement and the transactions it contemplates only in its capacity as trustee of the Trust (and, if the Trust is a registered under the Trusts Act 2019 Act (""), in its capacity as responsible entity of the Trust) and in no other capacity. This applies also in respect of any past and future conduct (including omissions) under or relating to this Agreement or those transactions.
2. Under and in connection with this Agreement and those transactions and conduct:
 - a) the Applicant's liability (including for negligence) is limited to the extent to which it can be satisfied out of the assets of the Trust. The Applicant need not pay any such liability out of other assets.
 - b) the NZGBC may only do the following (but any resulting liability remains subject to the limitations in clause 2(a) of this Schedule):
 - i. prove and participate in, and otherwise benefit from, any form of insolvency administration of the Applicant in its capacity as trustee (and, if applicable, responsible entity) of the Trust only and only with respect to the Trust assets.
 - ii. exercise rights and remedies with respect to the Trust assets, including but not limited to setoffs and seeking orders for the appointment of a court-appointed receiver over Trust assets.
 - iii. enforce its security (if any) and exercise contractual rights against the Applicant in its capacity as trustee (and, if applicable, responsible entity) of the Trust only; and
 - iv. bring any other proceedings against the Applicant in its capacity as trustee (and, if applicable, responsible entity) of the Trust only, seeking relief or orders that are not inconsistent with the limitations in this clause,

but may not otherwise:
 - v. bring proceedings against the Applicant in any capacity other than as trustee (and, if applicable, responsible entity) of the Trust.
 - vi. take any steps to have the Applicant placed into any form of insolvency administration (but this does not prevent the appointment of a receiver, or a receiver and manager, in respect of Trust assets); or
 - vii. seek by any other means (including setoffs) to have a liability of the Applicant to NZGBC (including for negligence) satisfied out of any assets of the Applicant other than Trust assets.
3. Clauses 1 and 2 of this Schedule apply despite any other provision in this Agreement but do not apply with respect to any liability of the Applicant to NZGBC (including for negligence):
 - a) to the extent that the liability is not satisfied because the Applicant has no right or power to have the Trust assets applied towards satisfaction of that liability, or its right or power to do so is subject to a deduction, reduction, limit or requirement to make good, in any case because the Applicant has acted beyond power in relation to the Trust or improperly in relation to the performance of its duties as trustee (and, if applicable, responsible entity) of the Trust; or
 - b) under Clause 5 of this Schedule.
4. The limitation in clause 2(a) of this Schedule is to be disregarded for the purposes (but only for the purposes) of the rights and remedies described in clause 2(b) of this Schedule, and interpreting this agreement and any security for it, including determining the following:
 - a) Whether amounts are to be regarded as payable (and for this purpose damages or other amounts will be regarded as payable if they would have been owed had a suit or action barred under clause 2(b) of this Schedule been brought);
 - b) The calculations of amounts owing; or
 - c) Whether a breach or default has occurred, but any resulting liability is still subject to the limitations in clause 2(a) of this Schedule.

5. The Applicant represents and warrants that, as at the date of this Agreement and for the duration of the Agreement:
 - a) it has the right to be indemnified out of the assets of the Trusts for all liabilities incurred by the Applicant under this Agreement, and this right has not been limited in any way, and it has no liability which may be set off against that right of indemnity.
 - b) it is solvent and there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable; and
 - c) the Trust instrument is complete, true and correct.
6. Where the Applicant issues a notice of meeting (or becomes aware that one or more Trust investors has issued a notice of meeting) to Trust investors seeking approval for the Applicant to be replaced as responsible entity of the relevant Trust, the Applicant will promptly provide written notice to NZGBC of the replacement proposal. Such written notice shall be provided at least 14 days before the date of the investor meeting and include the details of the proposed new responsible entity and the proposed replacement date.
7. Where the Applicant proposes to sell, transfer or otherwise dispose of any or all its rights in relation to the Project or the Design by way of change of trustee, the Applicant must:
 - a) if the relevant Trust is not a registered scheme, deliver to NZGBC a copy of any Change of Ownership Agreement, duly signed by the proposed new owner of the Applicant's rights (in the form set out in Schedule 4 of this Agreement); or
 - b) if the relevant Trust is a registered scheme, deliver to NZGBC details of the novation of this Agreement under the Trusts Act including details of the new owner of the Applicant's rights and contact information.

Schedule 4 - Change of Ownership Agreement

RECITALS

- A. This Change of Ownership Agreement (**Assignment**), made by the Owner and the Purchaser (defined below), will be effective upon the occurrence of both) NZGBC’s receipt of an executed copy of the same via email 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 by 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

2. OWNER

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

Owner Owner’s Representative – if Owner is an Organisation

Address

City State Postcode Email

3. PURCHASER

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

Purchaser Purchaser’s Representative – if Purchaser is an Organisation

Address

City 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) 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 NZGBC from all obligations to the Owner and waives any and all rights and/or claims it may have against NZGBC as of NZGBC 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 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 of Liability), 13 (Confidentiality), 19 (Dispute Resolution) and 21 (Governing Law); and
 - ii. those clauses obliging the Owner to defend and indemnify 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 |
|-------------------------------|-----------------------------------|
| <div>Signature of Owner</div> | <div>Signature of Purchaser</div> |
| <div>Name</div> | <div>Name</div> |
| <div>Title</div> | <div>Title</div> |
| <div>Date</div> | <div>Date</div> |

ANNEXURE A – Data Objectives

The NZGBC collects Applicant Data for purposes relating to the Green Building Certification Process and to create a preeminent data source on sustainable buildings in New Zealand to use for the benefit of members and in its operational and policy initiatives (**Data Objectives**).

The NZGBC may publish or share Registration and Certified Project information on its website. In addition, NZGBC uses deidentified data from such Projects (e.g. GHG emissions and water consumption across building types).

Confidential Information such as floor plans, independently commissioned reports etc. is not published.

Examples of NZGBC's use of the data for the Data Objectives are as follows.

a) Reporting and publishing

- Report on data gathered under the Green Star Certification Process to analyse trends and impacts to:
 - assist the NZGBC in providing its services including evidence-based research and advocacy.
 - assist industry and members.
- Publish Project data on the NZGBC website e.g. project name, location, rating tool, project score, credits targeted, credits achieved.
- Share data elements with external organizations for inclusion in databases of organisations aligned with NZGBC's strategic goals, e.g. NABERS, EECA.
- Share data with external parties involved in research including the value of Green Star achievements.

b) Membership and customer services

- With Applicant authorisation, share data gathered under the Green Star Certification Process with third parties to assist Applicants in the Process and to enhance and enable interoperability with other rating schemes.
- Report to members including through analysis of member performance against equivalent projects and companies using deidentified peer information.

CERTIFIED RATING TRADEMARKS



DESIGNED ASSESSMENT TRADEMARK



PERFORMANCE RATING TRADEMARKS



