

## CERTIFICATION AGREEMENT

between

**THE GREEN BUILDING COUNCIL OF SOUTH AFRICA**

and

**Note:** Please initial all pages, complete the field above, as well as all fields on page 33 and 'Annexure 1' before returning to the GBCSA.

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## PART I – INTRODUCTORY PROVISIONS

### 1 INTERPRETATION

- 1.1 In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –
- 1.1.1 **"Agreement"** means this agreement together with the annexures;
- 1.1.2 **"Applicant"** means the limited liability private company duly registered and incorporated in accordance with the laws of South Africa whose details appear in Annexure "1" and who is seeking Certification of the Project;
- 1.1.3 **"Application"** means an application for Certification in respect of a Registered Green Star SA Project, contemplated in clause 7;
- 1.1.4 **"Assessment"** means an independent third-party assessment process undertaken by the GBCSA to assess an Application;
- 1.1.5 **"Project Certification Fee "** means the fee, varied by the GBCSA from time to time, payable by the Applicant to the GBCSA for the independent third-party Assessment, which fees as at the Signature Date are calculated in accordance with the schedule of fees contained in Annexure "3";
- 1.1.6 **"Assessment Panel"** means the panel of Assessors appointed by the GBCSA to assess an Application, as contemplated in [clause 8](#);
- 1.1.7 **"Assessor"** means a person or persons, an independent third-party of the GBCSA, nominated and appointed by the GBCSA to serve on the Assessment Panel, knowledgeable and with experience in the green building industry, and/or such other accreditation courses or who has such other appropriate assessment qualifications as the GBCSA may from time to time determine;
- 1.1.8 **"Building"** refers to buildings or the design of buildings as may be represented by specifications or plans, in respect of which a Certification is sought;
- 1.1.9 **"Certification"** means the right granted to an Applicant by the GBCSA upon submission of a successful Application that a Certified Rating has been awarded in respect of the **project** and **"Certified"** shall have a similar meaning;

- 1.1.10 **"Certification Criteria"** means specified requirements and conditions as defined in the formal certification guideline documents and resources issued by the GBCSA including but not limited to Technical Manuals, Rating Tools, Calculators, Calculator Guides and Clarifications which the GBCSA and the Assessment Panel will consider before a Certification will be granted;
- 1.1.11 **"Certification Date"** means the date of issue of a Certified Rating to the Applicant in respect of the Registered Project;
- 1.1.12 **"Certification Logo"** means the logo set out in Annexure "2" which is issued in respect of the Project that has been Certified to indicate its Certification status;
- 1.1.13 **"Certified Rating"** means a Green Star SA Rating of one, two, three, four, five or six stars that may be awarded by the GBCSA under this Agreement;
- 1.1.14 **"Certified Rating Certificate"** means a Green Star SA Rating Certificate to be awarded to the Applicant to provide confirmation of the Green Star SA Certified Rating awarded by the GBCSA at the conclusion of an Independent Assessment that results in a Certified Rating;
- 1.1.15 **"Certified Rating Levels"** means the one, two, three, four, five or six star rating standards upon which the Certification was based;
- 1.1.16 **"Confidential Information"** means all and any information or data in whatever form (including in oral, written, electronic and visual form) relating to the Parties, which by its nature or content is identifiable as, or could reasonably be expected to be, confidential and/or proprietary to the Parties and includes information, even if not marked as being confidential, restricted, secret, proprietary or any similar designation;
- 1.1.17 **"Credit"** means an environmental initiative with associated points counted towards the total score towards a Green Star SA Rating as specified in the Technical Manual and designated as a "Credit";
- 1.1.18 **"Credit Interpretation"** means consideration and determination of the requirements by the Applicant to obtain a Credit where that Credit cannot be demonstrated by the Applicant in the way set out in the Technical Manual;
- 1.1.19 **"Credit Interpretation Request Fee"** means any fee charged by the GBCSA to an Applicant in respect of Credit Interpretation Requests, pursuant to clause 10;

- 1.1.20 **"Credit Interpretation Request or CIR"** means a request for Credit Interpretation, lodged by the Applicant in accordance with clause 10.5.2;
- 1.1.21 **"Credit Interpretation Request Ruling"** means GBCSA's response to a Credit Interpretation Request;
- 1.1.22 **"Design"** includes, without limitation, all designs and plans relating to the Development;
- 1.1.23 **"Development"** means the proposed building, refurbishment or extension, including any development of the land upon which the building(s) are, or are to be, located, in respect of which a Certification is sought;
- 1.1.24 **"Existing Building Performance Rating Tool"** means the Green Star SA Rating tool and includes all updated versions thereof at each relevant time, and includes without limitation all of the GBCSA's Confidential Information therein;
- 1.1.25 **"Energy & Water Benchmarking Certificate"** means a certificate issued to office buildings indicating their assessed Energy & Water Benchmarking scores using the GBCSA's Energy & Water Benchmarking Tool.
- 1.1.26 **"Fee"** means -
- 1.1.26.1 the Application Fee contemplated in clause 6.2;
  - 1.1.26.2 the Project Registration Fee contemplated in clause 7.1.6;
  - 1.1.26.3 any Credit Interpretation Request Fee; and
  - 1.1.26.4 other fees charged by the GBCSA and payable by the Applicant for matters which do not fall within the above categories,
- in each case as varied at any time under any provision of this Agreement or any other agreement between the Parties;
- 1.1.27 **"GBCSA"** means the Green Building Council of South Africa, registration number 2007/029477/08, a non profit company duly incorporated in accordance with the laws of the Republic of South Africa;
- 1.1.28 **"Green Star SA Rating"** means a Green Star SA rating of one to six stars under the Green Star SA rating system;

- 1.1.29 **"Independent Assessment"** means an independent assessment by one or more Assessor(s) of the Project;
- 1.1.30 **"Parties"** means the GBCSA and the Applicant and **"Party"** means either of the Parties;
- 1.1.31 **"Payment Date"** means the due date for payment of any Fee by the Applicant to the GBCSA under clause 12, being -
- 1.1.31.1 in relation to the Project Certification Fee, the date of execution of this Agreement by the Parties; and
- 1.1.31.2 in relation to the Credit Interpretation Fees and Fees payable for additional inquiries made by the Applicant in accordance with clause 9.5, the date of submission of the Credit Interpretation of additional inquiry;
- 1.1.32 **"Pilot Certification"** means a Certification issued in respect of Pilot Project;
- 1.1.33 **"Pilot Project"** means a project targeting a Pilot Certification under a Pilot Tool;
- 1.1.34 **"Pilot Tool"** means the test version of the Existing Building Performance Rating Tool;
- 1.1.35 **"Pilot Period"** refers to the period under which projects will be able to certify under the Pilot Tool. Pilot Projects are required to target Round 1 submission by 31 August 2014. Should submission be expected to take place after this date, the GBCSA is to be notified 3 months prior. No Green Star SA – Existing Building Performance PILOT submissions will be accepted after 30 June 2015;
- 1.1.36 **"Project"** means the Building or Development being considered for certification;
- 1.1.37 **"Project Submission"** means the entire package of documentation provided by the Applicant to confirm compliance with the Green Star SA rating system;
- 1.1.38 **"Registered Project"** means a Project that has successfully been registered as contemplated in [clause 7](#);
- 1.1.39 **"Rules"** means the Certification Trade Mark rules;
- 1.1.40 **"Services"** means -

- 1.1.40.1 the Third-party Independent Assessment;
- 1.1.40.2 any Credit Interpretations; and
- 1.1.40.3 all other obligations and services to be performed by the GBCSA under this Agreement;
- 1.1.41 **"Technical Clarifications"** means consideration and determination of a clarification to the technical requirements of a Credit set out in the relevant Green Star SA Technical Manual or the certification process of Green Star SA;
- 1.1.42 **"Technical Manual"** means the version of the relevant Green Star SA rating tool Technical Manual current at the date of execution of this Agreement, as varied from time to time;
- 1.1.43 **"Technical Advisory Group"** means a committee of industry experts designated or consulted by the GBCSA to assist in determining Credit Interpretation Requests as contemplated in clause 10.5.4;
- 1.1.44 **"Trade Mark"** means the GBCSA's trade mark or marks set out in Annexure "2";
- 1.1.45 **"VAT"** means value added tax as defined in the Value Added Tax Act 89 of 1991 as amended from time to time; and
- 1.1.46 **"Website"** means the website of the GBCSA located at [www.gbcsa.org.za](http://www.gbcsa.org.za).
- 1.2 In this Agreement -
  - 1.2.1 clause headings and the heading of the Agreement are for convenience only and are not to be used in its interpretation;
  - 1.2.2 an expression which denotes -
    - 1.2.2.1 any gender includes the other genders;
    - 1.2.2.2 a natural person includes a juristic person and *vice versa*;
    - 1.2.2.3 the singular includes the plural and *vice versa*;
    - 1.2.2.4 a Party includes a reference to that Party's successors in title and assigns allowed at law; and
    - 1.2.2.5 a reference to a consecutive series of two or more clauses is deemed to be



inclusive of both the first and last mentioned clauses.

- 1.3 Any reference in this Agreement to –
- 1.3.1 **"business hours"** shall be construed as being the hours between 08h30 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time;
- 1.3.2 **"days"** shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 1.3.3 **"laws"** means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgements, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any Governmental Body; and the common law, and **"law"** shall have a similar meaning; and
- 1.3.4 **"person"** means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality.
- 1.4 The words **"include"** and **"including"** mean "include without limitation" and "including without limitation". The use of the words **"include"** and **"including"** followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.5 Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 0 or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 1.6 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 1.7 Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.

- 1.8 A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- 1.9 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 1.10 If the due date for performance of any obligation in terms of this Agreement is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding business day.
- 1.11 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.12 The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- 1.13 No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement.
- 1.14 The use of any expression in this Agreement covering a process available under South African law, such as winding-up, shall, if either of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
- 1.15 Any reference in this Agreement to "**this Agreement**" or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.
- 1.16 In this Agreement the words "**clause**" or "**clauses**" and "**annexure**" or "**annexures**" refer to clauses of and annexures to this Agreement.

## PART I – INTRODUCTORY PROVISIONS

### 2 INTRODUCTION

- 2.1 The Rating Tool has been developed by the GBCSA to evaluate the environmental initiatives of commercial buildings.
- 2.2 To earn a Certified Rating, the Applicant must satisfy the Certification Criteria and be awarded a minimum number of Credits to attain a Green Star SA Rating of one, two, three, four, five or six stars.
- 2.3 The Applicant wishes to apply for a Certification for the purpose set out in Annexure "1".
- 2.4 This Agreement sets out *inter alia* the terms on which the Application and Certification will take place and the basis on which the Applicant may use and promote the Green Star SA Certified Rating for the Project and the Trade Mark and associated logos.
- 2.5 The Parties wish to record in writing their agreement in respect of the above and matters ancillary thereto.

### 3 ORDER OF PRECEDENCE

In the event of any conflict or inconsistency between the provisions of this Agreement, Annexures, Rules and/or other schedules, the terms and conditions of this Agreement shall prevail to the extent of such conflict.

### 4 RELATIONSHIP

The relationship between the Parties is that of an independent contractor and this Agreement does not create any agency, partnership, employment, joint venture and/or right of representation by either Party on behalf of the other. Nothing contained in this Agreement shall be construed so as to create any such relationship.

### 5 DURATION

This Agreement shall commence on the Effective Date and shall, subject to clauses 20 and 21 endure for 3 (three) years from the date of the project's certification, provided that the Building maintains the Certification Criteria. The Building will need to be re-certified after 3 (three) years.

## PART II – APPLICATION FOR CERTIFICATION

### 6 PROJECT REGISTRATION

- 6.1 The Applicant must register the Project by completing the web-based registration application form on the Website and by paying the Application Fee contemplated in clause 13.2.1.
- 6.2 Upon registration of the Project and payment of the Application Fees, as contemplated in clause 6, the Project will be designated as a Registered Green Star SA Project. The Applicant will then be required to submit the Application as contemplated in clause 7.

### 7 APPLICATION

- 7.1 In submitting an Application, the Applicant shall -
  - 7.1.1 provide all documentation required for Independent Assessment as laid out in the formal certification guideline documents and resources issued by the GBCSA including but not limited to Technical Manuals, Rating Tools, Calculators, Calculator Guides and Clarifications ;
  - 7.1.2 adhere to and follow the certification submission procedure as stipulated in the Website;
  - 7.1.3 where necessary, provide the GBCSA and/or the Assessment Panel with all information reasonably requested by the GBCSA and/or the Assessment Panel in order to complete the Independent Assessment; and
  - 7.1.4 comply with all the terms and conditions contained in the Technical Manual and any additional eligibility criteria relevant to the Rating Tool specified on the Website, together with such Credit Interpretation Request rulings and Technical Clarifications in respect of such criteria as may be displayed on the Website from time to time;
  - 7.1.5 in the case of Pilot projects, target Round 1 submission to the GBCSA by 31 August 2014. Should submission be expected to take place after this date, the GBCSA is to be notified 3 months prior. No Green Star SA – Existing Building Performance PILOT submissions will be accepted after 30 June 2015; and
  - 7.1.6 pay the Project Registration Fee contemplated in clause 13.2.2.

- 7.2 The Application will thereafter be processed by the GBCSA and be submitted for

Independent Assessment.

## **8 INDEPENDENT THIRD-PARTY ASSESSMENT**

- 8.1 Upon submission of the Application, the Application will be assessed by the Assessment Panel who will make a recommendation to the GBCSA whether or not the Project meets the Certification Criteria.
- 8.2 To the extent required, the GBCSA shall –
  - 8.2.1 provide the Applicant with a summary of the documentation required for the assessment;
  - 8.2.2 project manage the third-party independent assessment.
- 8.3 Subject to clause 8.4, upon receiving and considering the recommendation of the Assessment Panel, if all relevant Certification Criteria have been fulfilled and the Applicant is not in breach of this Agreement, the GBCSA may award the Applicant a Certified Rating evidenced by a Certified Rating Certificate and a letter confirming the Certified Rating.
- 8.4 The GBCSA may decline to issue a Green Star SA Certified Rating in its absolute discretion, in which event no further Fees will be payable and all Fees paid to date in respect of the Application will be refunded. Fees will only be refunded in instances where the Independent Assessment has not taken place yet.

## **9 TECHNICAL CLARIFICATIONS**

- 9.1 Requests for Technical Clarifications must be made via email to [greenstarsa@gbcsa.org.za](mailto:greenstarsa@gbcsa.org.za), unless otherwise specified by the GBCSA in writing.
- 9.2 The Applicant may request up to 4 (four) Technical Clarifications to the GBCSA without charge.
- 9.3 Regardless of whether the Applicant requests a Technical Clarification by email pursuant to clause 9.1 or any other means of communication, including but not limited to telephone, fax or in person, the GBCSA will take account of each request for a Technical Clarification in calculating the number of free Technical Clarifications for the purposes of clause 9.2.
- 9.4 For the purposes of calculating the number of free Technical Clarifications available to the Applicant pursuant to clause 9.2, the GBCSA will not take into account any request for clarification made by the Applicant in response to written

notification of the Assessment Panel's initial assessment of the Application – the Project has a single opportunity after the Round 1 assessment to submit a complete list of queries on the Assessment Panel's responses.

- 9.5 Technical Clarifications in addition to the 4 (four) free Technical Clarifications contemplated in clause 9.2, will be charged at the prevailing rate charged rate for Technical Clarifications, which is recorded as being R750 (seven hundred and fifty Rand) plus VAT as at the Signature Date. Please note however, these fees are not applicable to Pilot Projects.

## 10 CREDIT INTERPRETATION REQUESTS

- 10.1 The Technical Manual outlines the Compliance Requirements for meeting the Aim of the Credit but if the Applicant has developed an alternative design solution or an alternative form of documentation not contained in the Technical Manual, which in its view may meet the Credit, the Applicant may submit a Credit Interpretation Request to the GBCSA.
- 10.2 An Applicant may submit a Credit Interpretation Request to the GBCSA if the Applicant wishes to advocate for an alternative yet equivalent method of meeting the Aim of Credit.
- 10.3 The Applicant may lodge up to 2 (two) Credit Interpretation Requests with the GBCSA without charge.
- 10.4 If the GBCSA grants a Credit Interpretation Request to the Applicant, the Credit Interpretation Request Ruling may be made available to every Registered Green Star SA Project and be incorporated into subsequent versions of the Rating Tools and all previous Credit Interpretation Request Rulings may be made available in the Website. Where the Credit Interpretation Request is not granted the result will be made available only to the Applicant.
- 10.5 A valid Credit Interpretation Request must be submitted in accordance with the following procedure -
- 10.5.1 the Applicant must first consult the Technical Manual for guidance on compliance requirements and review the existing Credit Interpretation rulings on the Website;
- 10.5.2 if the Technical Manual and the Credit Interpretation Rulings on the Website do not adequately address the issue, then the Applicant may submit a Credit Interpretation Request with the GBCSA using the Credit Interpretation

Request form available on the Website;

- 10.5.3 each excess Credit Interpretation Request must be accompanied by a Credit Interpretation Request fee, which fee will be the prevailing rate charged rate for excess Credit Interpretation Request, which is recorded as being R2500 (two thousand five hundred rand) plus VAT, as at the Signature Date ("**Credit Interpretation Request Fee**"); please note however, these fees are not applicable to Pilot Projects.
- 10.5.4 determination of the Credit Interpretation Request will be made by the GBCSA, who may, in its discretion, consult members of the Technical Advisory Group and other independent consultants the GBCSA and will be made solely on the information provided by the Applicant in the Credit Interpretation Request; and
- 10.5.5 any further information submitted by the Applicant following a Credit Interpretation Request Ruling will constitute a new Credit Interpretation Request and the Applicant will be liable for a further Credit Interpretation Fee pursuant to clause 10.5.3.

### **PART III – CERTIFICATION**

#### **11 INTELLECTUAL PROPERTY RIGHTS, USE OF CERTIFICATION LOGO AND TRADE MARK**

- 11.1 It is recorded that the GBCSA has been granted the exclusive licence to use, develop and adapt the Green Star SA Certification Logo and Trade Mark in South Africa.
- 11.2 If a Certification is granted by the GBCSA with a Certified Rating –
  - 11.2.1 the Applicant will be granted a non-transferable, non-exclusive royalty free licence under this Agreement, from the Certification Date, to use and display the Certification Logo showing the relevant Certified Rating in accordance with this Agreement.
  - 11.2.2 for office buildings, the Applicant will also be issued with an Energy & Water Benchmarking Certificate indicating their relative Energy and Water performance as benchmarked using the GBCSA's Energy & Water Benchmarking Tool. The Applicant will be granted a non-transferable, non-exclusive royalty free licence under this Agreement, from the Certification Date, to use and display the Energy & Water Benchmarking Certificates.

- 11.3 An Applicant shall only use the Certification Logo, Trade Mark and Energy & Water Benchmarking Certificates or claim an entitlement to use the Certification Logo and Trade Mark or certificates in relation to the Project once a Certification Certificate is issued. The Applicant shall not, prior to the Certification of the Project, use the Certification Logo, the Trade Mark or Energy & Water Benchmarking Certificate.
- 11.4 The Applicant shall not sublicense the licence, granted to it in terms of this Agreement.
- 11.5 The Applicant shall not permit any third party, including without limitation any contractor or consultant, to use the Certification Logo, Trade Mark or Energy & Water Benchmarking certificate to promote its association with the Certified Rating, except with the prior written approval of the GBCSA.
- 11.6 The Applicant agrees that the GBCSA retains all intellectual property rights including, but not limited to copyright, and other proprietary rights in the Rating Tool and the Certification Logo, Trade Mark and Energy & Water Benchmarking Certificate and agrees not to sell, modify, or use the Certification Logo, Trade Mark or certificates except in accordance with this Agreement.
- 11.7 The Applicant agrees that use of the Certification Logo, Trade Mark and Energy & Water Benchmarking Certificate by the Applicant shall inure for the benefit of the GBCSA.
- 11.8 The Applicant agrees that the GBCSA retains all copyright and other proprietary rights in the Rating Tool, GBCSA's Confidential Information, the Certification Logo, Trade Mark and Energy & Water Benchmarking Certificate and agrees not to sell, modify, or use the Certification Logo, Trade Mark or certificates except in accordance with this Agreement
- 11.9 The Applicant agrees that it will not reproduce, display or distribute any documents provided to it in connection with this Agreement or the Technical Manual, unless expressly authorised to do so under this Agreement or the Technical Manual, in any way for any public or commercial purpose, including display on a website or in a networked environment.
- 11.10 Unauthorised use of the Trade Mark will violate copyright and other laws, and is prohibited. All text, graphics, layout and other elements of content contained in the Rating Tool, the Certification Logo, Trade Mark and Energy & Water Benchmarking certificate are owned by or exclusively licensed to the GBCSA and



are protected by copyright, trade mark and other relevant legislation.

- 11.11 Once a project is certified, the Applicant grants the GBCSA the right to use the Project's information to publish a project case study and information sheet that contains information about the project's address, size, Green Star SA results and initiatives targeted and achieved, project team members and photographs.
- 11.12 Once a project is certified, for the duration of this agreement the Applicant agrees to supply the GBCSA with overall building energy and water consumption data on an annual basis. The Applicant grants the GBCSA the right to use this consumption data anonymously to create benchmarks without disclosing the identity of the Applicant or Project. The GBCSA reserves the right to revoke a project's certification should such Energy & Water data show significant deviation (25% of Energy or Water Performance score) from the certified values during the three years of certification validity.

## **PART IV – GENERAL PROVISIONS**

### **12 LIAISON**

- 12.1 The Parties shall each nominate a liaison person through whom all communications between the Parties shall be directed.
- 12.2 A Party may change its nominated liaison person at any time by notifying the other Party thereof in writing.

### **13 PAYMENT**

- 13.1 The Applicant shall pay a total fee stipulated in Annexure "3" ("**Fees**").
- 13.2 Subject to clause 8.4, the Fees (Project Certification Fees) are non-refundable and payable as follows -
  - 13.2.1 an Application Fee, being R6000.00 (six thousand Rand) excluding VAT of the total fee is payable on Registration of the Project; and
  - 13.2.2 the balance of the Fees payable on or prior to submission of the Application for Assessment.
- 13.3 The GBCSA shall issue an invoice to the Applicant invoice for any Fee due by the Applicant to the GBCSA under this Agreement.

- 13.4 Any invoice shall specify -
- 13.4.1 that it is a VAT invoice;
  - 13.4.2 the registration number of the GBCSA;
  - 13.4.3 the Services for which the Fee is due;
  - 13.4.4 the date of supply for those Services;
  - 13.4.5 the aggregate total amount of the claim for the Fee;
  - 13.4.6 any other amount then due and payable to the GBCSA; and
  - 13.4.7 the VAT amount comprised in the total amount of the invoice.
  - 13.4.8 The invoice shall comply with any Law relating to the form or content of VAT invoices, in addition to any other requirement of this provision.
- 13.5 The Applicant shall pay any Fee before the later of the Payment Date applicable to that Fee and the date being 28 days subsequent to receipt of the invoice for that Fee.
- 13.6 The Applicant shall pay interest on any Fee or other amount that is not paid on or prior to the due date for that Fee determined in accordance with clause 13.5, at the prime rate published by the GBCSA's current bankers at the time, to accrue from day to day from the due date down to and including the actual date of payment in full.
- 13.7 The GBCSA may withhold the final results of the Independent Assessment until all Fees due and owing by the Applicant to the GBCSA have been paid.
- 13.8 The Applicant acknowledges that any charging of interest pursuant to clause 13.6 or withholding of the final results of the Independent Assessment pursuant to clause 13.7 by the GBCSA is in addition to and is not to the exclusion of any other rights or remedies the GBCSA may have against the Applicant for failure to pay any Fee when due pursuant to clause 13.5.
- 13.9 All payments to be made under or arising from this Agreement will be made by electronic transfer of immediately available and freely transferable funds, free of any deductions or set-off whatsoever, in the currency of the Republic of South Africa.

## 14 TRANSFER OF RIGHTS IN THE PROJECT

14.1 In the event that the Applicant sells, transfers or otherwise disposes of its rights in relation to the Building, Development and/or the Design ("**Rights**") or in the event of a change in Control of the Applicant, the Applicant shall -

14.1.1 notify the GBCSA in writing of its intention to transfer the Rights before the transfer occurs;

14.1.2 notify all the parties to which the transfer of Rights may apply, of this Agreement; and

14.1.3 inform the purchaser (the "**Purchaser**") that the Purchaser can acquire the Rights, subject to the obligations, under this Agreement by -

14.1.3.1 the Applicant assigning the relevant rights and obligations to the Purchaser subject to the GBCSA's written consent; or

14.1.3.2 by negotiating a new Agreement with the GBCSA.

14.2 The GBCSA may in its discretion -

14.2.1 consent to an assignment of this Agreement to the Purchaser subject to the Purchaser agreeing in writing in advance to such conditions (if any) as the GBCSA may, in its discretion, impose on the Purchaser; or

14.2.2 negotiate a new certification agreement with the Purchaser.

14.3 If the Purchaser fails to –

14.3.1 agree to all the conditions imposed by the GBCSA pursuant to clause 10.4.1 above; or

14.3.2 a new certification agreement is not entered into between the GBCSA and the Purchaser within 60 (sixty) days of the GBCSA notifying the Applicant and the Purchaser of its decision to assign or enter into a new agreement under clauses 14.2.1 or 14.2.2 respectively,

the GBCSA may terminate this Agreement, and may make a public notice of any of the above actions.

## 15 GENERAL OBLIGATIONS OF THE APPLICANT

During the course of this Agreement, the Applicant shall -

- 15.1 forthwith advise the GBCSA in writing should the Applicant become aware of any information or circumstances of whatsoever nature, that may affect the Certification granted in terms of this Agreement;
- 15.2 not perform any act or become involved in any activity, which will or may reflect adversely on the business, integrity, brand and/or goodwill of the GBCSA;
- 15.3 not disparage nor otherwise adversely comment upon the GBCSA, any of its officers, agents, employees or independent contractors, the Assessors, Assessment Panel, the Technical Advisory Group, Technical Manual, the Application process, the GBCSA's consideration and/or determinations or the Certified Rating or other rating that the Applicant may or may not be awarded;
- 15.4 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 GBCSA for registration of the Trade Mark or the maintenance of that registration;
- 15.5 not do or cause to be done any act or thing which may impair the GBCSA's right, title and interest in the Trade Mark.

## 16 WARRANTIES BY THE APPLICANT

- 16.1 The Applicant warrants that -
  - 16.1.1 it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;
  - 16.1.2 this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms
  - 16.1.3 the execution of this Agreement and the performance of its obligations hereunder does not and shall not –
    - 16.1.3.1 contravene any law or regulation to which it is subject;
    - 16.1.3.2 contravene any provision its constitutional documents; or
    - 16.1.3.3 conflict with, or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it;
  - 16.1.4 the information contained in the Application, the Applicant will provide to the Assessor and the GBCSA, its employees, agents and independent contractors (if any) under this Agreement is true, accurate and complete in all respects;

- 16.1.5 the information contained in the Application and the Project Submission, does not infringe upon any third parties intellectual property rights;
- 16.1.6 all material information of whatsoever nature or kind has been disclosed to the GBCSA which would have been material in the decision of the GBCSA to enter into the Agreement and/or to grant a Certification, either at all or on the terms and conditions set out herein;
- 16.1.7 should a Certification be granted in respect of the Project, the Applicant will not promote or use the Certified Rating for the Building, Development or the Premises or otherwise, in any way so that it may be considered (or the GBCSA notifies the Applicant) that the Certification applies to the Development or the Premises apart from the Project;
- 16.1.8 should a Certification be awarded only in relation to a Project, being an extension of the Premises, it will not promote or use the Certified Rating, by any act or omission in any way so that it may be considered (or the GBCSA notifies the Applicant) that the Certified Rating applies to any other part of the Premises; and/or
- 16.1.9 the **Project** will meet the compliance criteria set out in the formal certification guideline documents and resources issued by the GBCSA including but not limited to Technical Manuals, Rating Tools, Calculators, Calculator Guides and Clarifications for the duration of the Agreement.
- 16.2 Each of the representations and warranties given by the Parties in terms of clause 16.1, shall –
  - 16.2.1 be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in this Agreement;
  - 16.2.2 continue and remain in force notwithstanding the completion of any or all the transactions contemplated in this Agreement; and
  - 16.2.3 *prima facie* be deemed to be material and to be a material representation inducing the GBCSA to enter into this Agreement.

## 17 INDEMNITIES

- 17.1 Without prejudice to any rights of the GBCSA arising from any other provision of this Agreement, the Applicant hereby indemnifies and holds the GBCSA, its officers, employees, agents, contractors (including any Assessor and any

member of the Technical Advisory Group) and members, harmless in respect of any direct claim, loss, liability, damages, cost and expenses of whatsoever nature, including any legal costs, which the GBCSA its officers, employees, agents, contractors (including any Assessor and any member of the Technical Working Group and Technical Advisor Group) and members may suffer or incur by reason of or in consequence of or in connection with –

- 17.1.1 its Application and Project Submission;
  - 17.1.2 the GBCSA's assessment of its Project Submission including the Independent third-party Assessment;
  - 17.1.3 a failure of any of the warranties or any undertakings contained in this Agreement to be true and correct;
  - 17.1.4 the use the GBCSA may make of its Project Submission
  - 17.1.5 any breach of or non-compliance by the Applicant with any of its obligations contained in this Agreement;
  - 17.1.6 from the failure of the Applicant to comply with any laws;
  - 17.1.7 pursuant to or arising from the issue by the GBCSA of a Certification; or
  - 17.1.8 the Applicant's use of, or reliance on, the Rating Tool, the Technical Manual or any related documentation.
- 17.2 The indemnification provisions in this clause 17 are in addition to, and do not in any way derogate from, any statutory or common law remedy any Party may have for breach of this Agreement, including breach of any representation or warranty.

## 18 LIMITATION OF LIABILITY

- 18.1 The GBCSA shall not be liable –
  - 18.1.1 to the Applicant for any indirect, incidental, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind, including loss of profits and loss of goodwill;
  - 18.1.2 for any loss or damage of whatsoever nature suffered by the Applicant arising out of or in connection with any breach of the Agreement by the Applicant or any act, misrepresentation, error or omission made by or on behalf of the

Applicant, or the Applicant's respective officers, directors or employees; nor

18.1.3 for claims, losses or liabilities for any loss of profit or any other indirect, special or consequential loss arising out of any inaccuracy within the relevant Rating Tool, the Technical Manual or any related documentation and makes no warranty, expressed or implied, including the warranties of merchantability and fitness for a particular purpose, nor assumes any legal liability or responsibility to the Applicant or any third parties for the accuracy, completeness, or use of, or reliance on, any information contained in the relevant Rating Tool, the Technical Manual or any related documentation, or for any injuries, losses or damages (including, without limitation, equitable relief and economic loss) arising out of such use or reliance.

18.2 Notwithstanding any other provision of this Agreement, the GBCSA, its affiliates or any of their respective officers, directors or employees (collectively the "**GBCSA Representatives**") shall not be liable to the Applicant or any other person for any actual or contingent losses, claims, liabilities, damages, costs or expenses of any nature whatsoever which the Applicant or any other person may suffer or incur as a result of or in connection with the performance or rendering of the Services (including any act or omission) or any of them in terms of this Agreement, save by reason of and the extent of the gross negligence and/or wilful misconduct and/or fraud on the part of the GBCSA or the GBCSA Representatives.

18.3 In no event will the GBCSA be liable for any indirect, special, incidental, economic or consequential damage or damages for negligence or any loss of profit, however arising, and the liability of the GBCSA 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 GBCSA to, save by reason of and the extent of the gross negligence and/or wilful misconduct and/or fraud on the part of the GBCSA -

18.3.1 the resupply of the Services ; or

18.3.2 payment of the cost to the Applicant for the resupply of the Services.

## 19 **CONFIDENTIALITY**

19.1 The Parties undertake that during the operation of, and after the expiration, termination or cancellation of, this Agreement for any reason, they will keep confidential –

- 19.1.1 any information which any Party ("**Disclosing Party**") communicates to any other Party ("**Recipient**") and which is stated to be or by its nature is intended to be confidential;
- 19.1.2 all other information of the same confidential nature concerning the business of a Disclosing Party which comes to the knowledge of any Recipient whilst it is engaged in negotiating the terms of this Agreement or after its conclusion, including –
  - 19.1.2.1 details of the Disclosing Party's financial structures and operating results;
  - 19.1.2.2 details of the Disclosing Party's strategic objectives and planning.
- 19.2 If a Recipient is uncertain about whether any information is to be treated as confidential in terms of this clause 19, it shall be obliged to treat it as such until written clearance is obtained from the Disclosing Party.
- 19.3 Each Party undertakes, subject to clause 19.4, not to disclose any information which is to be kept confidential in terms of this clause 19, nor to use such information for its own or anyone else's benefit.
- 19.4 Notwithstanding the provisions of clause 19.3, a Recipient shall be entitled to disclose any information to be kept confidential if and to the extent only that the disclosure is *bona fide* and necessary for the purposes of carrying out its duties in terms of this Agreement.
- 19.5 The obligation of confidentiality placed on the Parties in terms of this clause 19 shall cease to apply to a Recipient in respect of any information which –
  - 19.5.1 is or becomes generally available to the public other than by the negligence or default of the Recipient or by the breach of this Agreement by the Recipient;
  - 19.5.2 the Disclosing Party confirms in writing is disclosed on a non-confidential basis;
  - 19.5.3 has lawfully become known by or come into the possession of the Recipient on a non-confidential basis from a source other than the Disclosing Party having the legal right to disclose same, provided that such knowledge or possession is evidenced by the written records of the Recipient existing at the Signature Date; or
  - 19.5.4 is disclosed pursuant to a requirement or request by operation of law,



regulation or court order, to the extent of compliance with such requirement or request only and not for any other purpose,

provided that –

- 19.5.5 the onus shall at all times rest on the Recipient to establish that information falls within the exclusions set out in clauses 19.5.1 to 19.5.4;
  - 19.5.6 information will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in the Recipient's possession; and
  - 19.5.7 any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in the Recipient's possession, but only if the combination itself and its principle of operation are in the public domain or in the Recipient's possession.
- 19.6 In the event that the Recipient is required to disclose confidential information of the Disclosing Party as contemplated in clause 19.5.4, the Recipient will –
- 19.6.1 advise the Disclosing Party thereof in writing prior to disclosure, if possible;
  - 19.6.2 take such steps to limit the disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;
  - 19.6.3 afford the Disclosing Party a reasonable opportunity, if possible, to intervene in the proceedings;
  - 19.6.4 comply with the Disclosing Party's reasonable requests as to the manner and terms of any such disclosure; and
  - 19.6.5 notify the Disclosing Party of the recipient of, and the form and extent of, any such disclosure or announcement immediately after it is made.

## 20 BREACH

- 20.1 If a Party ("**Defaulting Party**") commits any breach of this Agreement and fails to remedy such breach within 10 (ten) business days ("**Notice Period**") of written notice requiring the breach to be remedied, then the Party giving the notice ("**Aggrieved Party**") will be entitled, at its option –
  - 20.1.1 to claim immediate specific performance of any of the Defaulting Party's obligations under this Agreement, with or without claiming damages, whether

or not such obligation has fallen due for performance, and to require the Defaulting Party to provide security to the satisfaction of the Aggrieved Party for the Defaulting Party's obligations; or

20.1.2 to cancel this Agreement, with or without claiming damages, in which case written notice of the cancellation shall be given to the Defaulting Party, and the cancellation shall take effect on the giving of the notice. Neither Party shall be entitled to cancel this Agreement unless the breach is a material breach. A breach will be deemed to be a material breach if -

20.1.2.1 it is capable of being remedied, but is not so remedied within the Notice Period; or

20.1.2.2 it is incapable of being remedied or is not remedied within the Notice Period, and payment in money will compensate for such breach but such payment is not made within the Notice Period.

20.2 The Parties agree that any costs awarded will be recoverable on an attorney-and-own-client scale unless the Court specifically determines that such scale shall not apply, in which event the costs will be recoverable in accordance with the High Court tariff, determined on an attorney-and-client scale.

20.3 The Aggrieved Party's remedies in terms of this clause 20 are without prejudice to any other remedies to which the Aggrieved Party may be entitled in law.

## **21 TERMINATION OF THE AGREEMENT, SUSPENSION AND REVOCATION OF CERTIFICATION**

21.1 The GBCSA may immediately terminate this Agreement, suspend or revoke the Certification granted in terms of this Agreement, by giving the Applicant a written notice of such termination, suspension or revocation, if the Applicant -

21.1.1 engages in any conduct in relation to the Rating Tool, the Independent third-party Assessment or the Certification Logo or the Trade Mark which in the GBCSA's reasonable opinion is likely to, or does, mislead or deceive third parties;

21.1.2 sells, transfers, assigns or otherwise disposes of its Rights, in breach of clause 14;

21.1.3 the Trade Mark is used by the Applicant in a manner which prejudices the Trade Mark in any manner, constitutes a reputational risk to the GBCSA or

brings or may bring the GBCSA into disrepute;

- 21.1.4 fails to maintain the Certification Criteria set out in the formal certification guideline documents and resources issued by the GBCSA including but not limited to Technical Manuals, Rating Tools, Calculators, Calculator Guides and Clarifications;
- 21.1.5 the Applicant commits an act of insolvency, is placed under judicial management or business rescue or is wound-up (whether provisionally or finally);
- 21.1.6 the Applicant compromises with any of its creditors or endeavours or attempts to do so;

## 21.2 Termination by the Applicant

The Applicant may terminate this Agreement at any time by giving 30 (thirty) days written notice of such termination to the GBCSA. If the Applicant terminates this Agreement it will have no claim for reimbursement of any Fee paid or payable to the GBCSA under this Agreement.

## 21.3 Consequences of termination

### 21.3.1 Upon termination of this Agreement,

#### 21.3.1.1 the Applicant shall -

- 21.3.1.1.1 immediately cease any and all use of the Certification Logo and Trade Mark;
- 21.3.1.1.2 remove the Certified Rating Certificate (if any) from public display;
- 21.3.1.1.3 cease to promote or otherwise refer to the Certified Rating of the Building, Development or Design;
- 21.3.1.1.4 do such further things as may be reasonably required by the GBCSA to protect the GBCSA's right, title and interest in the Certification Logo, Trade Mark, and/or the Rating Tool;
- 21.3.1.1.5 within 2 (two) weeks of such termination or cancellation, deliver to the GBCSA all papers, correspondence, records, copies and other documents of every kind concerning or containing any reference to the Certification Logo and Trade Mark;

- 21.3.1.1.6        cease any representations or claims and not hold forth in any manner whatsoever that the Applicant has or ever had any relationship with or connection to the GBCSA;
- 21.3.1.2        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.
- 21.3.2        Any termination of this Agreement will not prejudice the GBCSA's rights to seek and obtain damages for any breach of this Agreement. The GBCSA shall not be liable to the Applicant for any sum in the event of termination under this Agreement.
- 21.3.3        The GBCSA 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 GBCSA but unpaid by the Applicant at the date of termination.
- 21.4        Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination of this Agreement and continue in full force and effect.
- 21.5        Reinstatement of Certification

The GBCSA may, in its sole discretion reinstate a Certification suspended or revoked as contemplated in clause 21.1 or require the Applicant to reapply for a Certification.

## **22 DISPUTE RESOLUTION**

- 22.1        In the event of there being any dispute or difference between the Parties arising out of this Agreement, the said dispute or difference shall on written demand by either Party be submitted to arbitration in Cape Town in accordance with the AFSA rules, which arbitration shall be administered by AFSA.
- 22.2        Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration (as last applied by AFSA) before an arbitrator appointed by agreement between the parties to the dispute or failing agreement within 10 (ten) business days of the demand for arbitration, then any party to the dispute shall be entitled to forthwith call upon the chairperson of the Cape Bar Council to nominate the arbitrator, provided that the person so nominated shall be an advocate of not less than 10 (ten) years

standing as such. The person so nominated shall be the duly appointed arbitrator in respect of the dispute. In the event of the attorneys of the parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the parties to the dispute.

- 22.3 Any party to the arbitration may appeal the decision of the arbitrator or arbitrators in terms of the AFSA rules for commercial arbitration.
- 22.4 Nothing herein contained shall be deemed to prevent or prohibit a party to the arbitration from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
- 22.5 Any arbitration in terms of this clause 21 (including any appeal proceedings) shall be conducted *in camera* and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
- 22.6 This clause 21 will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.
- 22.7 The Parties agree that the written demand by a party to the dispute in terms of clause 22.1 that the dispute or difference be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969.

## 23 NOTICES AND DOMICILIA

- 23.1 The GBCSA selects as its *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following telefax numbers and the Applicant selects as its *domicilia citandi et executandi*, the physical addresses appearing in Annexure "1", and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as the telefax numbers appearing in Annexure "2" -

<b><u>Name</u></b> GBCSA	<b><u>Physical Address</u></b> 2nd Floor The Old Warehouse Building Black River Office Park 2 Fir Street Observatory 7925	<b><u>Telefax</u></b> +27 86 104 2272
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Marked for the attention of: **Chief Technical Officer**

provided that a Party may change its *domicilium* or its address for the purposes of notices to any other physical address or telefax number in the Republic of South Africa by written notice to the other Party to that effect. Such change of address will be effective 5 (five) business days after receipt of the notice of the change.

- 23.2 All notices to be given in terms of this Agreement will be given in writing, in English, and will -
- 23.2.1 be delivered by hand or sent by telefax;
- 23.2.2 if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a business day will be presumed to have been received on the following business day; and
- 23.2.3 if sent by telefax during business hours, be presumed to have been received on the date of successful transmission of the telefax. Any telefax sent after business hours or on a day which is not a business day will be presumed to have been received on the following business day.
- 23.3 Notwithstanding the above, any notice given in writing in English, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause.
- 23.4 The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment of or variation to this Agreement may be given or concluded via email.

## 24 BENEFIT OF THE AGREEMENT

This Agreement will also be for the benefit of and be binding upon the successors in title and permitted assigns of the Parties or either of them.

## 25 APPLICABLE LAW AND JURISDICTION

- 25.1 This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.
- 25.2 Subject to clause 21, the Parties hereby consent and submit to the non-exclusive jurisdiction of the Western Cape High Court, Cape Town in any dispute arising from or in connection with this Agreement.

## 26 NEW LAWS AND INABILITY TO PERFORM

- 26.1 If any law comes into operation subsequent to the signature of this Agreement which law affects any aspect or matter or issue contained in this Agreement, the Parties undertake to enter into negotiations in good faith regarding a variation of this Agreement in order to ensure that neither this Agreement nor its implementation constitutes a contravention of such law.
- 26.2 If either Party is prevented from performing any of its obligations in terms of this Agreement as a result of any existing or new law or as a result of any event beyond its reasonable control whether or not foreseeable, including general power failures, breakdown of telecommunication networks or computers, political intervention, imposition of sanctions, riot or insurrection, it shall not be liable for any failure to perform its obligations under this Agreement while such event persists and shall have the right (unless such event has or is likely to persist for a period not exceeding 30 (thirty) days) to terminate this Agreement at any time after the intervention of or becoming aware of such event.
- 26.3 If this Agreement is terminated by either Party in accordance with the provisions of this clause 26 neither Party shall have any claim or obligation in respect of any loss suffered or damages incurred as a result of such cancellation.

## 27 PUBLICITY

- 27.1 Subject to clause 27.4, each Party undertakes to keep confidential and not to disclose to any third party, save as may be required in law (including by the rules of any recognised securities exchange, where applicable) or permitted in terms of this Agreement, the nature, content or existence of this Agreement and any and

all information given by a Party to the other Parties pursuant to this Agreement.

- 27.2 No announcements of any nature whatsoever will be made by or on behalf of a Party relating to this Agreement without the prior written consent of the other Parties, save for any announcement or other statement required to be made in terms of the provisions of any law or by the rules of any recognised securities exchange, in which event the Party obliged to make such statement will first consult with the other Parties in order to enable the Parties in good faith to attempt to agree the content of such announcement, which (unless agreed) must go no further than is required in terms of such law or rules. This will not apply to a Party wishing to respond to the other Parties which has made an announcement of some nature in breach of this clause 27.
- 27.3 The Parties specifically agree that, where a Certified Rating is awarded to the Applicant, either Party may –
- 27.3.1 engage in the publication of articles or papers to publicise the Applicant's entry into this Agreement and the outcome of the Independent Assessment;
  - 27.3.2 engage in commercial promotions relating to the Applicant's participation in the Independent Assessment;
  - 27.3.3 publicise the outcome of the Independent Assessment.
- 27.4 The Applicant agrees that the GBCSA may provide special recognition for the Project if, in the GBCSA's opinion, the Project achieves outstanding or otherwise notable results in the Independent Assessment.
- 27.5 This clause 27 shall not apply to any disclosure made by a Party to its professional advisors or consultants, provided that they have agreed to the same confidentiality undertakings, or to any judicial or arbitral tribunal or officer, in connection with any matter relating to this Agreement or arising out of it.
- 27.6 The Parties agree that they will not engage in publicity or promotion of the nature specified in this clause 27 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.

## 28 **INDEPENDENT ADVICE**

Each of the Parties to this Agreement hereby acknowledges and agrees that –



- 28.1 it has been free to secure independent legal and other professional advice as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent advice or has dispensed with the necessity of doing so; and
- 28.2 all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are in accordance with the Party's intentions.

## 29 GENERAL

### 29.1 Whole Agreement

- 29.1.1 This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.
- 29.1.2 This Agreement supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.

### 29.2 Variations to be in Writing

No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.

### 29.3 No Indulgences

No latitude, extension of time or other indulgence which may be given or allowed by either Party to the other in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of either Party arising from this Agreement and no single or partial exercise of any right by either Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by that Party or operate as a waiver or a novation of or otherwise affect any of its rights in terms of or arising from this Agreement or estop or preclude it from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of either Party in exercising any right, power or privilege under

this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**29.4 No Waiver or Suspension of Rights**

No waiver, suspension or postponement by either Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by that Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

**29.5 Provisions Severable**

All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

**29.6 Continuing Effectiveness of Certain Provisions**

The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

**29.7 No Assignment**

Subject to clause 14, the Applicant shall not cede, delegate or assign this Agreement nor any part, share or interest herein nor any rights or obligations hereunder without the prior signed written consent of the GBCSA. The GBCSA may cede, delegate or assign this Agreement or any part, share or interest herein or any rights or obligations hereunder without the prior written consent of the GBCSA.

**29.8 Exclusion of Electronic Signature**

The reference in clauses 29.2, 29.4 and 29.7 to writing signed by a Party shall, notwithstanding anything to the contrary in this Agreement, be read and construed as excluding any form of electronic signature.

**30 COSTS**

Except as otherwise specifically provided herein, each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

**31 SIGNATURE**

- 31.1 This Agreement is signed by the Parties on the dates and at the places indicated below.
- 31.2 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.
- 31.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.
- 31.4 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 2014

For and on behalf of  
**THE GREEN BUILDING COUNCIL OF  
SOUTH AFRICA**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Designation of Signatory

SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 2014

For and on behalf of  
**[•]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Designation of Signatory

## APPLICANT DETAILS

1.	<b>Name of Applicant</b> <i>(Building Owner Company Name)</i>	
2.	<b>Company Registration Number</b>	
3.	<b>Domicilium</b> <i>(Name, Physical Address, Fax Number)</i>	
4.	<b>Certification Applied for</b>	certification of existing building

## PROJECT DETAILS

1.	<b>Project(s) Name (Building Name)</b>  Note: Where more than one project of the same owner is being registered, please indicate all projects. Where only one project is being registered, please complete 1) only.	1)  2)  3)  4)  5)  6)  7)  8)  9)  10)
2.	<b>Physical Address</b>	1)

		<div>2)</div> <div>3)</div> <div>4)</div> <div>5)</div> <div>6)</div> <div>7)</div> <div>8)</div> <div>9)</div> <div>10)</div>
3.	Gross Lettable Area of Entire building(s) (m2)	<div>1)</div> <div>2)</div> <div>3)</div> <div>4)</div>

**ANNEXURE "1"**

		5) 6) 7) 8) 9) 10)
<b>4.</b>	<b>Project Owner Representative Name</b>	
<b>5.</b>	<b>Project Owner Representative Contact Details</b> <i>(Tel, Email, Address)</i>	

## CERTIFICATION LOGO AND TRADE MARK

### 1,2,3 Star Certification Logo



### 4 Star Certification Logo



### 5 Star Certification Logo



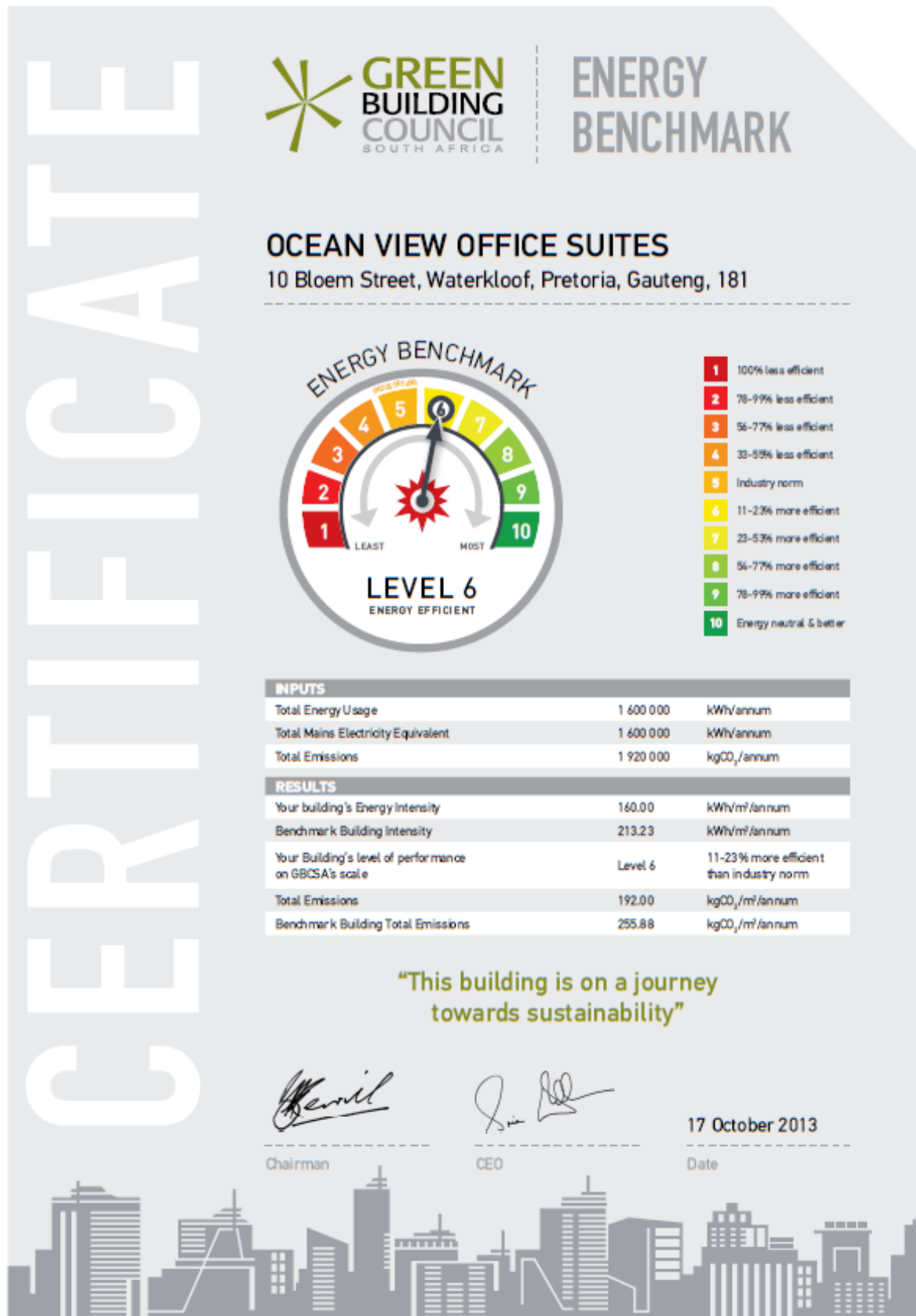
### 6 Star Certification Logo





## ENERGY &amp; WATER BENCHMARKING CERTIFICATE

*Note: Energy Benchmarking Certificate shown for illustrative purposes. Water Benchmarking Certificate to follow much the same layout.*



## SCHEDULE OF FEES

The following certification fees will be applicable to Pilot projects.

	1 Star	2-3 Star	4-6 Star
	(10-19 points)	(20-44 points)	(45-100 points)
<b>Owner is a Member of GBCSA</b>	<b>R 15 000</b>	<b>R 20 000</b>	<b>R 24 000</b>
<b>Owner is a Non-Member</b>	<b>R 19 500</b>	<b>R 26 000</b>	<b>R 31 200</b>

*Note that certification fees are tiered based on the scope of rating targeted, with discounts available to buildings owned by GBCSA member organisations. The figures shown above are Excl. VAT.*

Upon Registration, a fee of R6 000 Excl. VAT will be charged. This fee will secure the project's place on the Pilot Programme and will include technical support and technical guidelines from the GBCSA. The fee will also include the assessment of the Project's Energy & Water consumption credit submissions (Ene-1 and Wat-1). For Office projects this will include an official timing & Water Benchmarking Certificate.