

BCA GREEN MARK SCHEME

TERMS & CONDITIONS

1. DEFINITIONS AND INTERPRETATION

The following words and expressions have the following meanings, unless they are inconsistent with the context:

AGREEMENT - these Terms and Conditions, the Email Acceptance, the Application Form and the Green Mark Criteria.

APPLICATION FORM - the application form submitted by the Applicant or the Applicant's consultants to BCA, both online and in a signed hard copy format.

APPLICANT - the developer of a Project and/or owner of a Building who applied for the Assessment of the Project or Building and the successors and permitted assigns of the developer/owner.

ASSESSMENT - the valuation of the standard of environmental performance of the Building or Project based on the Green Mark Criteria as at the date of the online Application Form submitted by the Applicant and in a manner set out on the Internet website of BCA at http://www.bca.gov.sg/GreenMark/green_mark_buildings.html and http://www.bca.gov.sg/GreenMark/green_mark_criteria.html, provided always that:

- (a) the Assessors may at their discretion determine the manner in which the valuation of standard of environmental performance is carried out; and
- (b) where there are two versions of the Green Mark Criteria published at the date of the online Application Form, Assessors may, at their discretion, decide the version to adopt.

ASSESSORS - BCA officers or any other persons authorised by BCA to carry out the Assessment of the Building or Project.

BCA - Building and Construction Authority.

BUILDING/PROJECT - the building/development of which the Assessment is sought which includes but is not limited to a building/development intended for residential, commercial, industrial, institutional, retail, office, or mixed use.

CERTIFICATE – letter of clearance issued by BCA setting out the Green Mark rating only on completion of the Site Verification of the Building or Project should the Building or Project requires Site Verification.

EMAIL ACCEPTANCE - email sent by BCA to Applicant informing that the application has been accepted.

FEES - the fees to be paid by the Applicant to BCA for BCA's conduct of the Pre-Assessment, carrying out of the Assessment (s), issuance and delivery of the Letter of Award, carrying out of the Site Verification (s) (if any) and issuance and delivery of the Certificate where required, the amount of which is stated in BCA's Email Acceptance.

GREEN MARK - BCA Green Mark Scheme as described at the Internet website of BCA at http://www.bca.gov.sg/GreenMark/green_mark_criteria.html and http://www.bca.gov.sg/GreenMark/green_mark_buildings.html, the contents of which may be amended from time to time.

GREEN MARK CRITERIA - Green Mark Criteria as stated at the Internet website of BCA at http://www.bca.gov.sg/GreenMark/green_mark_criteria.html, the contents of which may be amended from time to time.

LETTER OF AWARD – letter issued by BCA setting out the Green Mark award rating on completion of the Assessment.

LETTER OF AWARD EXPIRY DATE – expiry date in the Letter of Award indicating the date the Letter of Award is no longer valid.

PRE-ASSESSMENT – project preview carried out by BCA prior to the Assessment on a date set by BCA, in consultation with the Applicant.

SITE VERIFICATION - assessment of the functionality and performance of green features installed and/or the assessment of the building performance based on the actual building energy consumption data over 12 months to verify if the committed energy savings is realised, in the manner set out in the Internet website of BCA at http://www.bca.gov.sg/GreenMark/green_mark_criteria.html. Site Verification must be completed 12 months before the LOA expiry date. Site Verification will not be required for certain types of buildings and the Green Mark Criteria or Letter of Award will stipulate if Site Verifications are required.

Words importing the singular also include the plural and vice-versa where the context requires.

2. AGREEMENT FOR ASSESSMENT AND SITE VERIFICATION

2.1 Fees and the manner in which they are to be charged shall be as set out in the Email Acceptance. In consideration of the Fees, BCA shall conduct one Pre-Assessment, one Assessment of the Building or Project and where BCA deems it necessary, shall conduct, Site Verifications as provided under the Green Mark Criteria or Letter of Award. Where BCA deems that Site Verification is not required, BCA may, at its discretion, request for such supporting documents as it deems fit.

2.2 Should the Building or Project actually not be ready for Assessment or Site Verification on the dates proposed under Clauses 6.4.2 and 6.4.3 below, charges may be imposed by BCA for additional Assessments and Site Verifications that are required by the Applicant. Such charges if imposed by BCA shall be at BCA's discretion.

2.3 Within reasonable time after the completion of the Assessment and any presentation by the Applicant that BCA may request pursuant to clause 6.3.1 below, BCA shall issue and deliver the Letter of Award provided that:

2.3.1 the environmental performance of the Building or Project has met the Green Mark Criteria;

2.3.2 BCA has received the Fees; and

2.3.3 the Applicant has fulfilled all other requirements set by BCA as set out in the Email Acceptance.

3. SCOPE OF ASSESSMENT AND SITE VERIFICATION

- 3.1 BCA shall issue and deliver the Letter of Award to the Applicant following the Assessment and issue and deliver a Certificate to the Applicant following the Site Verification. The Applicant acknowledges and accepts that the Letter of Award and Certificate are solely based on the Green Mark Criteria, declarations and information provided by the Applicant, the Applicant's consultants and contractors.
- 3.2 The Applicant acknowledges and accepts that the Letter of Award and Certificate are not based on a detailed evaluation of the Building or Project, nor based on a detailed examination or inspection of the Building or Project. BCA conducts no other examinations, tests or inspections other than the examination based on the Green Mark Criteria.
- 3.3 The Applicant acknowledges and accepts that the Letter of Award is valid only until the expiry date indicated thereon. The Applicant shall not make any representation to any third party that the Building or Project has been Green Mark certified for any period beyond the Letter of Award Expiry Date. Notwithstanding the aforesaid, nothing in the Letter of Award, Certificate or any opinion conveyed during or relating to the Assessment or Site Verification shall be construed as an express or implied warranty or guarantee. All implied terms and warranties are expressly excluded to the maximum extent permitted by law.
- 3.4 Any determination, opinion, or valuation made by BCA shall be final and not subject to review, save for manifest error and the Applicant undertakes not to challenge or contest any such determination, opinion or valuation.
- 3.5 Until the Letter of Award Expiry Date, no reassessment of the Building or Project by BCA will be permitted.

4. LIMITATION ON LIABILITY

- 4.1 The Letter of Award and Certificate issued on completion of the Assessment and Site Verification of the Building or Project respectively is a representation to the Applicant only. BCA and its directors, servants, agents, and employees shall not be liable for any damage caused by reliance on any representation made by the Applicant to a third party in respect of the Letter of Award and Certificate, and for any damage caused by reliance on any representation made by the Applicant to a third party in respect of any opinion expressed during or in relation to the Assessment and Site Verification. In the event that any claim or dispute should arise as a consequence of or relating to the Assessment, Site Verification, Letter of Award, Certificate or any such opinion, no claim whatsoever shall be made against BCA, or its directors, servants, agents, and employees.

- 4.2 The Applicant acknowledges and accepts that the Letter of Award and Certificate are to the effect that the Building or Project has met BCA's prevailing minimum Green Mark Criteria and should not be construed as indicative of or in any way related to the value or worth of the Building or Project or as recommendation to buy, sell or otherwise deal with the Building or Project. The Applicant further acknowledges that the results of the Assessment, Site Verification, contents of the Letter of Award and Certificate are not intended in any way to replace or supersede statutory requirements and/or responsibilities specified in relevant acts and/or regulations.
- 4.3 The Applicant acknowledges and accepts that, while every effort is made to ensure that consistent standards are used in the carrying out of Assessments and Site Verifications for different Buildings or Projects, there is a degree of subjectivity involved in the Assessments and Site Verifications which may result in any actual and/or perceived variations in the results for different Buildings or Projects. Any determination, opinion, or valuation made by BCA shall be conclusive and final and BCA will not be liable for any loss or damage suffered by reason of such deviation or variation.
- 4.4 BCA and its directors, servants, agents, and employees will not be liable for any damage to the Building or Project and/or other buildings in the Project or in the vicinity of the Building which may be caused in the course of the Assessment and Site Verification.
- 4.5 The Assessment and Site Verification of the Building or Project is conducted at the Applicant's own risk. While all possible care is taken in the Assessment and Site Verification, preparation of the Letter of Award and Certificate, neither BCA nor its directors, servants, agents or employees shall be liable (whether under the express or implied terms of this Agreement, at common law or in any other way) to the Applicant, the owner of the Building or Project or to any other persons for any loss, damage or injury of whatever nature arising out of or resulting from any act, neglect, omission or default on the part of BCA or its directors, servants, agents, or employees, relating to any information or opinion given or expressed whether in the Letter of Award, Certificate or elsewhere.
- 4.6 Without affecting the generality of the above, the Applicant unconditionally agrees that it shall not hold BCA and its directors, servants, agents, or employees liable for any direct, indirect, special, consequential loss or damage including loss of profits in the event of sale, purchase, lease or other dealings in the Building or Project resulting from any inaccuracy or mis-statement by BCA or its directors, servants, agents, or employees in the Letter of Award, Certificate or elsewhere.
- 4.7 The Applicant shall fully indemnify, defend and hold harmless BCA and its directors, servants, agents and employees against any:
- 4.7.1 claim, demand, action or proceeding made or commenced against BCA or its directors, servants, agents and/or employees by any person(s) in respect of any loss, damage or injury of whatever nature arising or resulting from or relating to the Assessment and Site Verification of the Building or Project, the Letter of Award, Certificate, or any information or opinion given or expressed in relation to the Assessment and Site Verification, and any loss, damage, costs or expense (including legal costs on an indemnity basis) incurred or suffered by BCA or its directors, servants, agents and/or employees in such event;

4.7.2 expense, loss, costs or damage incurred and arising from any Writ of Subpoena or any other court orders or directions served on BCA or its directors, servants, agents and/or employees by the Applicant or any other person(s), and any expense, loss, costs or damage incurred by BCA or its directors, servants, agents and/or employees in the event that they are required to provide any discovery of documents, attend to inspection of documents, provide evidence, or attend court, or in any other way required to be involved in legal proceedings arising or resulting from or in relation to the Assessment and Site Verification of the Building or Project, the Letter of Award, Certificate or any information or opinion given or expressed in relation thereto by BCA or its directors, servants, agents and/or employees.

5. FEES

- 5.1 Notwithstanding any other provision in this Agreement, for the avoidance of doubt, BCA shall not under any circumstance be under any obligation to conduct the Pre-Assessment, carry out the Assessment, Site Verification issue or deliver the Letter of Award or Certificate if the Fees have not been paid and received by BCA.
- 5.2 The Fees shall be paid by the Applicant to BCA in the amount and manner set out in the Email Acceptance. The Applicant shall bear all applicable taxes and bank charges, if any, in addition to the said Fees.
- 5.3 In the event that the Applicant indicates in writing to BCA, at least one (1) month before the date of the Pre-Assessment, that the Applicant wishes to withdraw from this Agreement, the Fees paid will be refunded by BCA. Such refund is subject to both BCA and the Applicant releasing each other from their respective obligations under this Agreement, and subject to an administrative charge, payable by the Applicant, the amount of which is to be determined by BCA.
- 5.4 Any computation of Fees payable for the Assessment by BCA shall be final and conclusive and binding on the Applicant.

6. RIGHTS AND DUTIES OF APPLICANT

- 6.1 The Applicant shall make available to BCA such documents detailing the environment-friendly features of the Building or Project and such other documents as deemed necessary and requested by BCA for purpose of the Pre-Assessment, Assessments and Site Verifications.
- 6.2 The Applicant shall ensure that the Building or Project complies with prevailing laws, including regulations and codes relevant to the Building or Project.
- 6.3 The Applicant shall render his full cooperation to BCA and its officers in the performance of the Pre-Assessment, Assessment and Site Verification:
- 6.3.1 the Applicant shall comply with all requests by BCA (including requests for documents, presentations etc.);
- 6.3.2 the Applicant shall procure the cooperation of its employees and servants in complying with the requests by BCA; and

- 6.3.3 the Applicant shall not in any way interfere, hinder or seek to influence BCA's Assessment and/or Site Verification.
- 6.4 At all times during the duration of this Agreement, the Applicant shall appoint one of its employees or third party consultants (whom shall act as the Applicant's agent) as a Co-ordinator to liaise with BCA for the duration of the Pre-Assessment, the Assessment and Site Verification. The Applicant shall ensure that the Co-ordinator performs the following obligations:
- 6.4.1 the Co-ordinator shall inform BCA of the progress at each stage of the construction works (where applicable) concerned;
- 6.4.2 the Co-ordinator shall propose to BCA the date(s) for the Assessment, provided always that the Assessment shall be carried out no later than 3 years from the date of BCA's Email Acceptance, failing which, BCA shall cease to be under any obligation to carry out the Assessment and issue and deliver the Letter of Award and shall, for the avoidance of doubt, be under no obligation to refund any Fees which have been paid;
- 6.4.3 the Co-ordinator shall propose to BCA the date(s) for the Site Verification, provided always that the Site Verification shall be carried out no later than 12 months before the Letter of Award Expiry Date, failing which, BCA shall cease to be under any obligation to carry out the Site Verification and shall, for the avoidance of doubt, be under no obligation to refund any Fees which have been paid;
- and
- 6.4.4 the Co-ordinator shall ensure that all information submitted for the purposes of the Assessment are true and also subsequently inform BCA of any material changes in the design, construction, or operation of the Building or Project which may affect the score and rating.
- 6.5 The Applicant shall allow BCA and its officers, full access to the Building or Project site for the purposes of the Pre-Assessment, Assessment and Site Verification and shall be responsible for the safety of the aforementioned while on site. The Applicant shall make provision for and maintain unhindered and safe access to facilitate the Pre-Assessment, Assessment, Site Verification and inspection works, including but not limited to the provision of special ladders, platforms, ramps or scaffolding as required by the Assessors.
- 6.6 The Applicant shall give BCA at least 30 days' written notice when arranging for the Assessment and Site Verification.
- 6.7 The Applicant undertakes to BCA that on or before the Letter of Award Expiry Date, it shall not make material changes to the design, construction, or operation of the Building or Project which may affect the score and rating contained in the Letter of Award and Certificate. The Applicant shall promptly notify BCA, in writing, if there are any material changes in the design, construction, or operation of the Building or Project which may affect the score and rating.

- 6.8 The Applicant shall ensure that the Letter of Award and Certificate, or any part thereof, is not used in a misleading manner. Should the Letter of Award or Certificate be withdrawn by BCA for whatever reason, the applicant shall not make any misrepresentations pertaining to the Letter of Award, Certificate or Building or Project's achievement of environmental standards.
- 6.9 The Applicant undertakes to BCA that it will not use the Letter of Award and Certificate in such a manner as to bring BCA or Green Mark into disrepute and will not make any statement regarding the Letter of Award and Certificate is misleading or unauthorized or make any misrepresentations pertaining to the Letter of Award and Certificate.
- 6.10 The Applicant undertakes to comply with Clauses 7.2.1 and 7.2.2 below.

7. RIGHTS AND DUTIES OF BCA

- 7.1 BCA will exercise due care in the performance of the Assessment and Site Verification.
- 7.2 BCA may, upon the Applicant's written request, grant to the Applicant permission for the use of appropriate references to BCA and Green Mark in advertising or promotional materials solely in connection with the specific Building or Project that it has certified, provided always that:-
- 7.2.1 the Applicant's reference to BCA and Green Mark shall in no way tend to create a misleading impression as to the nature of BCA's findings, coverage or service; and
- 7.2.2 the Applicant shall at all times comply with the terms and conditions relating to the use of the BCA Green Mark Logo as set out in the Internet website of BCA at http://www.bca.gov.sg/GreenMark/others/TC_logo.pdf.
- 7.3 The Applicant irrevocably consents to BCA:-
- (a) publishing a list of Buildings or Projects in any manner it deems fit in any medium that have or have not attained Green Mark certification, changes in status of Green Mark certification, withdrawal of the Letter of Award, Certificate and any statistical and/or other information in relation to these Buildings or Projects; and
- (b) making any publication about the Building or Project in any manner and medium it deems appropriate in so far as such publication shall relate to the purposes of publicity of Green Mark provided always that BCA shall not be under any obligation to make such publications.
- 7.4 For the avoidance of doubt, BCA shall be under no obligation to make available to the Applicant the detailed Assessment scores or any other information pertaining to the Assessment.
- 7.5 BCA may conduct random audits of the Building or Project, with 1 working day's prior notice to the Applicant.

8. TERMINATION

- 8.1 Without prejudice to its rights at common law, BCA shall be entitled to terminate this Agreement at any time in the event that:
- 8.1.1 the Applicant has not paid the Fees due on time; or
 - 8.1.2 the Applicant has failed to comply with Clause 6.2; or
 - 8.1.3 the Assessment has not taken place within 3 years from the date of the Email Acceptance as stipulated under Clause 6.4.2; or
 - 8.1.4 the Site Verification has not taken place within 12 months from the Letter of Award Expiry Date; or
 - 8.1.5 the Applicant has failed to comply with any of the terms and conditions specified in the Agreement; or
 - 8.1.6 the Assessments or Site Verifications do not meet the Green Mark Criteria; or
 - 8.1.7 the Applicant or Applicant's Coordinator has submitted false or misleading information to BCA; or
 - 8.1.8 the Applicant has failed to comply with Clause 6.7 above.
- 8.2 Upon termination of the Agreement, BCA shall withdraw the Letter of Award and Certificate (if any) issued to the Building/Project.
- 8.3 Notice of termination shall be deemed to be served on the Applicant if sent by registered post to the business address of the Applicant or such other correspondence address of the Applicant as notified to BCA from time to time and shall be effective from the date specified on the notice.
- 8.4 In the event that the Agreement is terminated by BCA under this clause, the Applicant shall nevertheless be liable for all Fees or monies due to BCA therefor and no claim whatsoever shall be made by the Applicant for any Fees or monies already paid to BCA.

9. WITHDRAWAL AND WITHHOLDING ISSUANCE OF LETTER OF AWARD AND CERTIFICATE

In the event of any site incident or conditions that may, in the sole opinion of BCA, compromise the Building's or Project's environmental, health and safety performance, result in any fatality or any permanent disablement, or that may compromise the structural integrity of the Building or Project or any adjoining developments, BCA shall be entitled to withhold the issuance and / or delivery of the Letter of Award and Certificate. The period of withholding shall be at the sole discretion of BCA.

10. FORCE MAJEURE

No claim for damages shall lie against the Applicant or BCA for delay or non-performance of obligations if the delay or non-performance is caused by government intervention or regulations, war, riot, acts of public enemies, strikes or other labour disturbances, fire, flood, Act of God or other cause beyond the reasonable control of the Applicant or BCA.

11. GENERAL

- 11.1 The Agreement constitutes the entire agreement between the Applicant and BCA and supersedes any and all other agreements, oral or in writing.
- 11.2 The failure of BCA to insist upon strict compliance with any term of the Agreement shall not be construed as a waiver with regard to any subsequent failure to comply with such term or provision.
- 11.3 If any provision in this Agreement is invalid or unenforceable under applicable law, the remaining provisions will continue in full force and effect.
- 11.4 This Agreement shall be governed by the law of Singapore and the parties submit to the exclusive jurisdiction of the Singapore Courts.
- 11.5 The Applicant may assign this Agreement subject to BCA's prior written consent.