

BCA GREEN MARK SCHEME

TERMS & CONDITIONS

1. Glossary

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

AGREEMENT- these Terms and Conditions, the letter of offer issued by BCA including its annexes and the acceptance portion counter- signed by the Applicant, the application form, and the Green Mark Criteria as may be revised from time to time.

APPLICANT - the developer of a building development and/or building owner of an existing building who applied for the Assessment of the building or project, which is the subject of this Agreement.

ASSESSMENT - the valuation of the standard of environmental performance of the Building or Project based on the Green Mark Criteria as described on BCA's webpage at http://www.bca.gov.sg/GreenMark/green_mark_criteria.html as at the date of the application, and in a manner set out on the said webpage as well as on BCA's other webpage at http://www.bca.gov.sg/GreenMark/green_mark_buildings.html, provided always that:

- (a) BCA may at its discretion carry out such valuation of standard of environmental performance in any manner it deems fit without adhering to the contents on the said webpages; and
- (b) where there are two versions of the Green Mark Criteria published at the date of application, Assessors may decide at their discretion 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 new building development or existing building of which of which the Assessment is sought.

CERTIFICATE - document issued by BCA setting out the Green Mark Award or rating on completion of the Assessment of the Building or Project, and stating the Building or Project's achievement of environmental standards as assessed based on the Green Mark Criteria.

FEES- the fees to be paid by the Applicant to BCA for BCA's conduct of the pre- Assessment briefing, carrying out of the Assessment, and issuance and delivery of the Certificate, the amount of which is stated in BCA's letter of offer counter-signed by the Applicant.

GM – BCA Green Mark Scheme as described at BCA's webpages 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.

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

2. Agreement for Assessment

2.1 Subject to and in accordance with the terms and conditions hereinafter set out, and in consideration of the Fees, BCA shall conduct a pre- Assessment briefing, make an Assessment of the Building or Project (the results of which shall be final), and issue and deliver the Certificate to the Applicant.

2.2 Fees and the manner in which they are to be charged shall be as set out in the letter of offer to be issued by BCA and counter-signed by the Applicant.

2.3 Within reasonable time after the completion of the Assessment and any presentation by the Applicant that BCA may request pursuant to clause 6.12 below, BCA shall issue and deliver the Certificate provided that:

2.3.1 the environmental performance of the Building or Project has been assessed as meeting the minimum requirements for Green Mark certification as set out in BCA's webpage at http://www.bca.gov.sg/GreenMark/green_mark_criteria.html;

2.3.2 BCA has received all Fees due to it; and

2.3.3 the Applicant has fulfilled all other requirements set by BCA as set out in the letter of offer or any of its annexes.

3. Scope of Assessment

3.1 The Applicant acknowledges and accepts that the Certificate is solely based on the Green Mark Criteria as stated in BCA's webpage at http://www.bca.gov.sg/GreenMark/green_mark_criteria.html, and declarations and information provided by developer / building owner/ consultants/contractors.

3.2 The Applicant acknowledges and accepts that the Certificate is not based on a detailed evaluation of the Building or Project, nor based on a detailed examination or inspection of the Building or Project. Other than the examination based on the said criteria, no other examinations, tests or inspections are conducted by BCA.

3.3 The Applicant acknowledges and accepts that the Certificate is valid only until the expiry date indicated thereon. The period of time from the issuance of the Certificate until its expiry shall be known as the "Validity Period". 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 Validity Period. Notwithstanding the aforesaid, nothing in the Certificate or any opinion conveyed during or relating to the Assessment shall be taken as warranting or guaranteeing that the environmental performance of the Building or Project will remain in the condition as stated in this Certificate as design changes, building additions and alterations, misuse and accident may occur after the Assessment. 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 During the Validity Period, no reassessment of the Building or Project would be allowed.

4. Limitation on Liability

- 4.1 The Certificate issued on completion of the Assessment of the Building or Project 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 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. In the event that any claim or dispute should arise as a consequence of or relating to the Assessment, the 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 Certificate is to the effect that the Building or Project has met BCA's prevailing minimum criteria for Green Mark certification 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 and / or the contents of the 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 all Assessments for different Buildings or Projects, there is a degree of subjectivity involved in the Assessments which may result in any actual and/or perceived variations in the Assessment 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.
- 4.5 The Assessment of the Building or Project is conducted at the Applicant's own risk. While all possible care is taken in the Assessment, the certification of the Building or Project, preparation of the Certificate, and the expression of any opinion relating to the Assessment, 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 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 Certificate or elsewhere.

- 4.7 The Applicant shall fully indemnify, defend and hold harmless BCA and its directors, servants, agents and employees harmless 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 of the Building or Project, the Certificate, or any information or opinion given or expressed in relation to the Assessment, 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 of the Building or Project, the 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 briefing, carry out the Assessment, issue or deliver the 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(s) and manner set out in the letter of offer issued by BCA and counter-signed by the Applicant. The Applicant shall bear all applicable taxes and bank charges, if any, in addition to the said Fees.
- 5.3 Unless otherwise specified or agreed by BCA, payment(s) must be made within the timeline(s) and in the manner stated in the letter of offer.
- 5.4 In the event that the Applicant indicates in writing to BCA, not later than one (1) month before the date of the pre- Assessment briefing as proposed by the Applicant and agreed to by BCA, that it 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 the amount of which is to be determined by BCA being paid by the Applicant.
- 5.5 For the avoidance of doubt and without prejudice to BCA's rights at law or under this Agreement, Fees shall not, in any other event, be refunded by BCA.
- 5.6 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 briefing and Assessment.
- 6.2 The Applicant shall ensure that the Building or Project complies with all relevant current building 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 briefing and Assessment:
 - 6.3.1 the Applicant shall comply with all requirements, procedures, directions and requests (including requests for documents) of BCA;
 - 6.3.2 the Applicant shall procure the cooperation of its employees and servants in complying with the requirements, procedures, directions and requests of BCA; and
 - 6.3.3 the Applicant shall not in any way interfere, hinder or seek to influence BCA's Assessment and/or conduct of the Assessment.
- 6.4 The Applicant shall appoint one of its staff as a Co-ordinator to liaise with BCA for the duration of the Assessment and in relation to the pre- Assessment briefing:
 - 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 letter of offer, failing which, BCA shall cease to be under any obligation to carry out the Assessment and issue and deliver the Certificate and shall, for the avoidance of doubt, be under no obligation to refund any Fees which have been paid;

and
 - 6.4.3 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 Assessment or the pre- Assessment briefing and shall be responsible for the safety of the aforementioned while on site.
- 6.6 The Applicant shall give BCA at least 30 days' written notice in arranging for the Assessment.
- 6.7 The Applicant shall ensure timely payment of Fees.

- 6.8 The Applicant shall arrange for the Co-ordinator and relevant personnel to assist in the Assessment as requested by BCA.
- 6.9 The Applicant shall make provision for and maintain unhindered and safe access to facilitate the Assessment, the pre- Assessment briefing and inspection works, including but not limited to the provision of special ladders, platforms, ramps or scaffolding as required by the Assessors.
- 6.10 The Applicant shall ensure that the Certificate, or any part thereof, is not used in a misleading manner.
- 6.11 The Applicant undertakes to BCA that it will not use the Certificate in such a manner as to bring BCA or GREEN MARK into disrepute and will not make any statement regarding the Certificate that BCA may consider misleading or unauthorised.
- 6.12 Upon BCA's request (if any), the Applicant shall make a presentation to BCA regarding the Building or Project addressing such issues and / or in such manner as BCA may specify.

7 Rights and Duties of BCA

- 7.1 BCA will exercise due care in the performance of the Assessment.
- 7.2 The Applicant acknowledges and accepts that BCA has the right to revise the Green Mark Criteria as it deems fit.
- 7.3 BCA shall be entitled to conduct a final review, as it deems necessary, after completion of the Assessment.
- 7.4 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:-
 - (a) the 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
 - (b) 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 BCA's webpage at http://www.bca.gov.sg/GreenMark/others/TC_logo.pdf.
- 7.6 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 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 (including the use of photographs and powerpoint slides) 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.

7.7 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.

7.8 BCA shall carry out:-

(a) the pre- Assessment briefing on the date proposed by the Applicant and indicated in the acceptance portion of BCA's letter of offer and agreed to by BCA (such agreement not to unreasonably withheld); and

(b) the Assessment on date(s) proposed by the Applicant and agreed to by BCA (such agreement not to unreasonably withheld),

provided that the Assessment shall be carried no later than 3 years from the date of BCA's letter of offer, failing which, BCA shall cease to be under any obligation to carry out the Assessment and pre- Assessment briefing, and to issue and deliver the Certificate, and shall, for the avoidance of doubt, be under no obligation to refund any Fees which have been paid.

8 Termination

8.1 Without prejudice to its rights at common law, BCA shall be entitled to terminate the Assessment and / or 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 Applicant has failed to comply with any of the terms and conditions specified in this Agreement.

8.2 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.

8.3 In the event that the Assessment and / or 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 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 Certificate. The period of withholding shall be at the sole discretion of BCA.

10. Force Majeure

No claim for damages against either the Applicant or BCA shall arise out of any breach of this Agreement if such breach is caused by government intervention or regulation, Act of Parliament, war, riot, acts of public enemies, strikes or other labour disturbances, fire, flood, Act of God or other cause beyond the control of the Applicant or BCA.

11. General

- 11.1 This Agreement constitutes the entire agreement between the parties 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 Save as otherwise stated in clause 11.4 below, for the purposes of the Contracts (Rights of Third Parties) Act (Chapter 53B) or any subsequent amendment thereto, this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.
- 11.4 Notwithstanding clause 11.3 above, BCA's directors, servants, agents and employees shall be entitled to rely on or enforce clauses 4.1, 4.4, 4.5, 4.6 and 4.7.
- 11.5 If any provision in this Agreement is invalid or unenforceable under applicable law, the remaining provisions will continue in full force and effect.
- 11.6 This Agreement shall be governed by the law of Singapore and the parties submit to the exclusive jurisdiction of the Singapore Courts.