



BCA International Pte Ltd

OVERSEAS GREEN MARK SCHEME'S TERMS AND CONDITIONS

Registration No.: 200700177D

52 Jurong Gateway Road, #11-01, Singapore 608550

Tel: +65 1800-342-5222 | Fax: +65 6325 4800

www.bcai.com.sg | A wholly-owned subsidiary of Building and Construction Authority

Please refer to BCAI's website for an up-to-date copy

OVERSEAS GREEN MARK SCHEME'S TERMS AND CONDITIONS

1. Glossary and Interpretation

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 BCAI 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, which is the subject of this Agreement.

ASSESSMENT - the valuation of the standard of environmental performance of the building 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 this 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) BCAI 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 - BCAI officers or any other persons authorised by BCAI to carry out the Assessment of the building.

BCA - Building and Construction Authority.

BCAI - BCA International Pte Ltd.

BUILDING / PROJECT - the new building development or existing building of which the Assessment is sought.

CERTIFICATE - document issued by BCA setting out the Green Mark Award or rating in relation to a building or project the issuance of which is to be procured by BCAI 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.

COMMENCEMENT DATE - the date of BCAI's letter of offer.

FEES - the fees to be paid by the Applicant to BCAI for BCAI's conduct of the pre- Assessment briefing, carrying out of the Assessment, and procurement and delivery of the Certificate, the amount of which is stated in BCAI'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.

TERM - the five (5) year period commencing from the Commencement Date.

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, BCAI shall conduct a Pre-Assessment briefing, make an Assessment of the PROJECT (the results of which shall be final), and procure the issuance of and deliver the Certificate.
- 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 BCAI and counter-signed by the Applicant.
- 2.3 On completion of the Assessment, BCAI shall procure the issuance of the Certificate by BCA and deliver the same to the Applicant provided that:
 - 2.3.1 the environmental performance of the 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 BCAI has received all Fees due to it; and
 - 2.3.3 the Applicant has fulfilled any other requirements set by BCAI 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 Project, nor based on a detailed examination or inspection of the Project. Other than the examination based on the criteria, no other examinations, tests or inspections are conducted by BCAI.
- 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 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 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 BCAI 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 project would be allowed.

4. Limitation on Liability

- 4.1 The Certificate issued on completion of the Assessment of the PROJECT is a representation to the Applicant only. BCAI, BCA, and their respective 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 BCAI 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 any opinion expressed by BCAI 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 by the Applicant against BCAI, BCA, or their respective directors, servants, agents, and employees.
- 4.2 The Applicant acknowledges and accepts that the Certificate is to the effect that the 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 PROJECT or as recommendation to buy, sell or otherwise deal with the PROJECT.
- 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 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 Projects. Any determination, opinion, or valuation made by BCAI shall be conclusive and final and BCAI will not be liable for any loss or damage suffered by reason of such deviation or variation.
- 4.4 BCAI will not be liable for any damage to the PROJECT and/or other parts of the buildings in the Project which may be caused by the Assessors in the course of the Assessment.
- 4.5 The Assessment of the PROJECT is conducted at the Applicant's own risk. While all possible care is taken in the Assessment, the certification of the PROJECT, preparation of the Certificate, and the expression of any opinion relating to the Assessment, neither BCAI nor BCA nor their 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 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 BCAI or BCA, and their respective 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 BCAI, BCA, and their respective 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 of or other dealings in the PROJECT resulting from any inaccuracy or misstatement by BCAI, BCA, or their respective directors, servants, agents, or employees in the Certificate or elsewhere.

- 4.7 The Applicant shall fully indemnify, defend and hold harmless BCAI and BCA, and their respective directors, servants, agents and/or employees harmless against any:
- 4.7.1 claim, demand, action or proceeding made or commenced against BCAI or BCA, or their respective 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 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 BCAI, BCA, and / or their respective 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 BCAI or BCA, or their respective directors, servants, agents and/or employees by the Applicant or any other person(s), and any expense, loss, costs or damage incurred by BCAI or BCA, and their respective 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 PROJECT, the Certificate or any information or opinion given or expressed in relation thereto by BCAI or BCA.

5. Fees

- 5.1 Notwithstanding any other provision in this Agreement, for the avoidance of doubt, BCAI shall not under any circumstance be under any obligation to conduct the PreAssessment briefing, carry out the Assessment, procure the issuance of the Certificate, or deliver the Certificate if the Fees have not been paid and received by BCAI.
- 5.2 The Fees shall be paid by the Applicant to BCAI in the amount(s) and manner set out in the letter of offer issued by BCAI and counter-signed by the Applicant. The Applicant shall bear all applicable local withholding taxes and bank charges in addition to the said Fees.
- 5.3 Payments must be made within thirty (30) days after the date of issuance of invoice by BCAI by way of a cashier's order issued in favour of "BCA International Pte Ltd" or such other modes as specified or agreed by BCAI.
- 5.4 In the event that the Applicant indicates in writing to BCAI, not later than one (1) month before the date of the Pre-Assessment briefing as proposed by the Applicant and agreed to by BCAI, that it wishes to withdraw from this Agreement, the Fees paid will be refunded by BCAI. Such refund is subject to both BCAI 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 BCAI being paid by the Applicant.
- 5.5 For the avoidance of doubt and without prejudice to BCAI's rights at law or under this Agreement, Fees shall not, in any other event, be refunded by BCAI.
- 5.6 Any computation of Fees payable for the Assessment by BCAI shall be final and conclusive and binding on the Applicant.

6. Rights and Duties of Applicant

- 6.1 The Applicant shall procure for BCAI and its Assessors all permits, permissions, and immigration visas or passes (apart from social visit visas or passes or their equivalent) necessary or incidental to BCAI's discharge of its obligations under this Agreement.
- 6.2 The Applicant shall make available to BCAI such documents detailing the environmentfriendly features of the Project and such other documents as deemed necessary and requested by BCAI for purpose of the pre- Assessment briefing and Assessment.
- 6.3 The Applicant shall ensure that the PROJECT complies with all relevant current building laws, including regulations and codes relevant to the PROJECT.
- 6.4 The Applicant shall render his full cooperation to BCAI and its officers in the performance of the Pre-Assessment briefing and Assessment:
 - 6.4.1 the Applicant shall comply with all requirements, procedures, directions and requests (including requests for documents) of BCAI;
 - 6.4.2 the Applicant shall procure the cooperation of its employees and servants in complying with the requirements, procedures, directions and requests of BCAI; and
 - 6.4.3 the Applicant shall not in any way interfere, hinder or seek to influence BCAI's Assessment and/or conduct of the Assessment.
- 6.5 The Applicant shall appoint one of its staff as a Co-ordinator to liase with BCAI for the duration of the Assessment and in relation to the Pre-Assessment briefing:
 - 6.5.1 the Co-ordinator shall inform BCAI of the progress at each stage of the construction works (where applicable) concerned;
 - 6.5.2 the Co-ordinator shall propose to BCAI the date(s) for the Assessment, provided always that the Assessment shall be carried out no later than 3 years from the date of BCAI's letter of offer, failing which, BCAI shall cease to be under any obligation to carry out the Assessment and procure the issuance of and deliver the Certificate and shall, for the avoidance of doubt, be under no obligation to refund any Fees which have been paid;

and
 - 6.5.3 the Co-ordinator shall ensure that all information submitted for the purposes of the Assessment are true and also subsequently inform BCAI of any material changes in the design, construction, or operation of the PROJECT which may affect the score and rating.
- 6.6 The Applicant shall allow BCAI and its officers full access to the 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.
- 6.7 The Applicant shall give BCAI at least 30 days' written notice in arranging for the Assessment.

- 6.8 The Applicant shall ensure timely payment of Fees.
- 6.9 The Applicant shall arrange for the Co-ordinator and relevant personnel to assist in the Assessment as requested by BCAI.
- 6.10 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.
- 6.11 The Applicant shall ensure that no Certificate or any part thereof is used in a misleading manner.
- 6.12 The Applicant undertakes to BCAI and BCA that it will not use the Certificate in such a manner as to bring BCAI, BCA or GREEN MARK into disrepute and will not make any statement regarding the Certificate that BCAI or BCA may consider misleading or unauthorised.

7. Rights and Duties of BCAI

- 7.1 BCAI will exercise due care in the performance of the Assessment.
- 7.2 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 the relevant acts and / or regulations in the jurisdiction in which the Project is located.
- 7.3 The Applicant acknowledges and accepts that BCA has the right to revise the Green Mark Criteria as it deems fit.
- 7.4 BCAI shall be entitled to conduct a final review, as it deems necessary, after completion of the Assessment.
- 7.5 BCAI will, upon the Applicant's written request, procure BCA's permission for the use of appropriate references to BCA and GREEN MARK in advertising or promotional materials solely in connection with the specific 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 BCAI's or BCA's findings, coverage or service; and
 - (b) the Applicant shall at all time 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 BCAI and BCA:-
- (a) publishing a list of PROJECTS in any manner they deem fit in any medium that have or have not attained GREEN MARK certification and any statistical and/or other information in relation to these PROJECTS; and
 - (b) making any publication about the PROJECT in any manner and medium they deem 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 neither BCAI nor BCA shall be under any obligation to make such publications.

7.7 For the avoidance of doubt, BCAI 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 BCAI shall carry out:-

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

(b) the Assessment on dates proposed by the Applicant and agreed to by BCAI (such agreement not to unreasonably withheld),

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

8. Term of Agreement

This Agreement shall commence upon the Commencement Date and shall (subject to earlier termination pursuant to clause 9 below) terminate automatically without notice five (5) calendar years from the Commencement Date.

9. Termination

9.1 BCAI shall be entitled to terminate the Agreement immediately by written notice to the Applicant in the event:

(a) the Applicant fails to pay any sum which has accrued due and payable under this Agreement by the Applicant to BCAI within [14] days from the date of service of BCAI's notice on the Applicant requesting payment of the same;

(b) the Applicant breaches any provision of this Agreement and, in the case of such a breach which is capable of remedy, fails to remedy the same within [30] days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;

(c) any mortgagee, chargee or encumbrancer takes possession of, or a receiver is appointed over, any of the property or assets of the Applicant;

(d) the Applicant becomes insolvent or makes any voluntary arrangement with its creditors or becomes subject to an administration order;

(e) an order of court is made to wind up the Applicant or to place it under judicial management or a resolution is passed by the members of the Applicant for its winding up or liquidation; or

(f) any distress or execution is levied or enforced in relation to any of the assets of the Applicant.

- 9.1A Any party reserves the right to terminate this Agreement, with or without cause, by giving thirty (30) days' notice in writing to the other party.
- 9.2 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 BCAI from time to time and shall be effective from the date specified on the notice.
- 9.3 The termination of the Agreement for any reason whatsoever shall not affect the accrued rights of any party hereunder, release any party from any liability which at the time of such termination has already accrued or which thereafter may accrue.
- 9.4 BCAI shall forthwith upon such termination handover to the Applicant one copy of all documents/reports and all data compiled, drawings and conclusion reached up to the date of termination.
- 9.5 Notwithstanding anything contained in this Agreement, neither party shall have any responsibility to the other party for:
- (a) any consequential or indirect loss, loss of revenue, profits, business or custom;
 - (b) any punitive, special or exemplary damages; or
 - (c) any loss of use, anticipated savings, goodwill, reputation or business contracts, or any other form of pure economic loss.

10. Withholding Issuance of Certificate

In the event of any site incident or conditions that may, in the sole opinion of BCAI, compromise the Project's environmental, health and safety performance, result in any fatality or any permanent disablement, or that may compromise the structural integrity of the Project or any adjoining developments, BCAI shall be entitled to:-

- (a) withhold procurement of the issuance of the Certificate by BCA; or
- (b) withhold delivery of the Certificate.

The period of withholding shall be at the sole discretion of BCAI.

11. Force Majeure

No claim for damages against either the Applicant or BCAI 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 BCAI.

12. General

- 12.1 This Agreement constitutes the entire agreement between the parties and supersedes any and all other agreements, oral or in writing.
- 12.2 The failure of BCAI 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.
- 12.3 Save as otherwise stated in clause 12.4 below, this Agreement does not create or purport to create any right under the Contracts (Rights of Third Parties) Act (Chapter 53B) or any subsequent amendment thereto, which is enforceable by any person or party who or which is not a party to this Agreement, and any person or party who or which is not a party to this Agreement shall have no right under the Act or subsequent amendment thereto, to enforce any of the terms and conditions herein.
- 12.4 Notwithstanding clause 12.3 above, BCA and the respective directors, servants, agents and/or employees of BCA and BCAI shall also be entitled to rely on or enforce clauses 4.1, 4.5, 4.6 and 4.7, and BCA shall also be entitled to rely on or enforce clauses 3.1, 3.2, 3.3, 4.2, 6.12, 7.2, 7.5 and 7.6.
- 12.5 If any provision in this Agreement is invalid or unenforceable under applicable law, the remaining provisions will continue in full force and effect.
- 12.6 This Agreement shall be governed by the law of Singapore and the parties submit to the exclusive jurisdiction of the Singapore Courts.
- 12.7 This Agreement is drawn up in the English language. This Agreement may be translated into any language other than English provided however that the English text shall in any event prevail.