Deed of Assignment and Licence of Intellectual Property

# Parties

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| Name | The Commonwealth of Australia, acting on behalf of the Commonwealth of Australia, the State of New South Wales, State of Queensland, State of Victoria, State of South Australia, State of Tasmania, State of Western Australia, the Australian Capital Territory and the Northern Territory. ABN 74 599 608 295, Level 12, 224 Bunda Street, Canberra ACT 2600 |
| Short form name | **Scheme Owner** |

|  |  |
| --- | --- |
| Name | [insert name of party] ([insert ABN]), [insert address of party] |
| Short form name | **Contributor** |

***[Drafting Note: Ensure that:***

1. ***if a single contributor, the entity named as the contributor above is correctly completed using the entity’s name, ACN/ABN and address or person’s name and address (whichever is applicable);***
2. ***if multiple contributors, the entities named as the contributors above are individually listed as Contributor 1, Contributor 2 etc and are correctly completed using the entity’s name, ACN/ABN and address or person’s name and address (whichever is applicable);***
3. ***name of the Contributor’s Draft WMTS is inserted in the definition of ‘Draft WMTS’ at clause 1.1; and***
4. ***the execution page at page 6 is amended appropriately so that each contributor can complete and sign the Deed.]***

# RECITALS

This Deed is made in the following context:

1. By an agreement dated 1 March 1994 and replaced on 30 April 2012 (**ABCB Agreement**) the Participating Governments established the Australian Building Codes Board (**ABCB**).
2. The Participating Governments entered into a legally binding deed on   
   28 August 2008 providing that they would equally share ownership of the intellectual property in the ABCB Material. Collectively the Participating Governments are referred to as the Scheme Owner. The General Manager of the ABCB Office is authorised to enter into contracts for the exploitation of the ABCB Material on behalf of the Scheme Owner, under the direction of the ABCB and in accordance with the ABCB Agreement.
3. The WaterMark Certification Scheme (**Scheme**) was transferred to the Scheme Owner acting through the ABCB under a transfer agreement on   
   25 February 2013. The ABCB is responsible for the management and oversight of the Scheme on behalf of the Scheme Owner. If a Contributor has prepared a new or amended WaterMark Technical Specification (**Draft** **WMTS**) and wishes to have it assessed by the ABCB for inclusion in the Scheme, the Draft WMTS must be submitted to the ABCB for approval. If approved, the WMTS will be made available by the ABCB through publication on the ABCB website.
4. To allow the ongoing management and operation of the Scheme by the ABCB, the Scheme Owner requires the Intellectual Property Rights in and to any approved WMTS to be assigned to the Scheme Owner so that the Scheme Owner may do all things necessary including use, publish, allow others to publish, amend, vary, revoke, exploit, sell, assign or distribute the approved WMTS at its discretion.
5. The Contributor owns, or has the authority and capacity to assign or licence, all of the Intellectual Property Rights in the Draft WMTS and has authority to enter into this Deed.
6. The Contributor wishes to have the Draft WMTS assessed for inclusion in the Scheme and so by entering into this Deed has agreed to assign the Intellectual Property Rights in the Draft WMTS to the Scheme Owner. The Deed is not intended to provide for the assignment of Intellectual Property Rights in the Documentation provided to the ABCB with the Draft WMTS.

**OPERATIVE PROVISIONS**

The Parties to this Deed agree:

1. **Definitions**
   1. Unless the contrary intention appears in this Deed a term in bold type has the meaning shown opposite it:

| Term | Definition |
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| ABCB Material | means a document published as a WMTS and accessed from, or made available on, the ABCB website [www.abcb.gov.au](http://www.abcb.gov.au/) |
| Claims | includes any dispute, action, application, claim, suit, proceeding, demand of any kind, whether formal or informal, and whether or not involving any legal, administrative or other process (including any existing on the Commencement Date). |
| Commencement Date | means the date determined in accordance with clause 3.2. |
| Contributor | means the Contributor or each of the Contributors listed as a party to this Deed. |
| Documentation | means all past, current and future written manuals or information relevant to the Draft WMTS including users' manuals, installation, instructions, modification manuals, flow charts, drawings and listings which are designed to assist or supplement the development, understanding or application of the Draft WMTS. |
| Draft WMTS | means the WMTS named **[insert name of Draft WMTS]** developed by the Contributor and provided to the ABCB for approval in accordance with the rules of the Scheme including any amendments to the WMTS by the Contributor that occur up to the date of any approval. |
| Intellectual Property Rights | means   1. all copyright (including rights in relation to phonograms and broadcasts); 2. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and 3. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,   but does not include:   1. Moral Rights; 2. the non-proprietary rights of performers; or 3. rights in relation to confidentiality. |
| Material | means the subject matter of any category of intellectual property. |
| Moral Rights | means the following non-proprietary rights of authors of copyright Material:   1. the right of attribution of authorship; 2. the right of integrity of authorship; and 3. the right not to have authorship falsely attributed. |
| Participating Governments | means the Commonwealth of Australia, the States of New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania, and the Australian Capital Territory and Northern Territory |
| Third Party Material | means any third party Intellectual Property Rights subsisting in or relating to the Draft WMTS, including Australian Standards or Material owned by Standards Australia (excluding ABCB Material). |
| WaterMark Certification Scheme (Scheme) | means the scheme administered by the ABCB which provides the method of demonstrating that plumbing and drainage products comply with the applicable specification through the WaterMark certificate of conformity. |
| WaterMark Technical Specification (WMTS) | means a technical specification approved by the ABCB in accordance with the rules of the Scheme. |

1. **Interpretation**
   1. In this Deed, unless the contrary intention appears:
      * 1. words importing a gender include any other gender;
        2. a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
        3. a reference to a party to this Deed includes the party's officers, agents, assignees, licensees, executors, administrators, successors and permitted assignees and substitutes;
        4. words in the singular include the plural and words in the plural include the singular;
        5. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
        6. if any word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
        7. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.
2. **Commencement**
   1. This Deed may be executed in counterparts.
   2. This Deed commences on the date the last party to this Deed signs this Deed (Commencement Date).
3. **Assignment and licence**
   1. Effective on and from the Commencement Date, the Contributor:
      * 1. assigns, transfers and conveys to the Scheme Owner all of the Contributor’s right, title and interest in and to the Draft WMTS (including all Intellectual Property Rights arising throughout the world), and
        2. grants the Scheme Owner an irrevocable and perpetual licence to use any Third Party Material subsisting in or related to the Draft WMTS for the purpose of the Scheme.
4. **Contributor's duty to assist Scheme Owner**
   1. The Contributor must, at the Contributor’s expense, do anything the Scheme Owner asks the Contributor to do (including signing documents) that is necessary for the Scheme Owner to obtain ownership (including the full benefits of ownership) of Intellectual Property Rights in the Draft WMTS as specified under this Deed.
5. **Warranties**
   1. The Contributor warrants and represents that it:
      * 1. is the sole owner of all Intellectual Property Rights subsisting in or related to the Draft WMTS, or
        2. has obtained a perpetual and irrevocable licence and right to sub-licence any Third Party Material, so that none of the Draft WMTS infringe any third party's Intellectual Property Rights or Moral Rights; and
        3. has the authority and capacity to assign (or licence as the case may be) the Intellectual Property Rights in the Draft WMTS to the Scheme Owner; and
        4. the Documentation provided to the Scheme Owner by the Contributor:

contains everything reasonably needed to understand, use and fully exploit the Draft WMTS; and

may be used by the Scheme Owner to the extent necessary to enable the Draft WMTS to be assessed for inclusion in the Scheme,

* + - 1. has ensured all right, title and interest in and to the Intellectual Property Rights in the Draft WMTS are assigned (or licensed as the case may be) to the Scheme Owner free from any encumbrance; and
      2. has no agreement, relationship or commitment with or to any other person or entity which may conflict with any of the Contributor’s obligations under this Deed.
  1. The Contributor warrants and represents that use of the Draft WMTS or the Documentation will not require the consent of, attribution to, or payment of any money to, any third party.

1. **Indemnification**
   1. The Contributor indemnifies, and will keep indemnified, the Scheme Owner in respect of all loss, damages, expenses, Claims made, suffered or incurred by the Scheme Owner or awarded against the Scheme Owner arising from a claim that the Scheme Owner ‘s ownership or use of the Draft WMTS or approved WMTS, or use of the Documentation or any derivative of these as contemplated by this Deed, constitutes an infringement of the Intellectual Property Rights or Moral Rights of any other person.
2. **Announcements**
   1. The Contributor must not make or authorise any public announcement or communication relating to this Deed or the Draft WMTS without the prior written consent of the Scheme Owner, except that the Contributor may make a disclosure in relation to this Deed:
3. to the Contributor’s professional advisers, bankers, insurers, auditors, financial advisers, financiers and other consultants who undertake to keep strictly confidential any such information disclosed to them; or
4. to comply with any applicable law or requirement of any regulatory body or government agency including any relevant stock exchange.
5. **Release**
   1. The Contributor releases the Scheme Owner from all Claims which the Contributor (or any party claiming through the Contributor) may have in respect of or in relation to:
6. the assignment or licence of Intellectual Property Rights under this Deed;
7. the ownership or use of the the Draft WMTS or approved WMTS, or the use of the Documentation by the Scheme Owner as contemplated by this Deed.
   1. This release may be pleaded as a bar to any Claim by the Contributor against the Scheme Owner with respect to or in relation to any matters referred to in this Deed.
8. **Variation**
   1. No variation of this Deed will be of any force or effect unless it is in writing and signed by the parties.
9. **Assignment**
   1. The Scheme Owner may assign its rights under this Deed without the consent of the Contributor.
10. **Governing law and jurisdiction**
    1. This Deed is governed by the law of the Australian Capital Territory and the parties:

submit to the non-exclusive jurisdiction of its courts and courts of appeal from them; and

will not object to the exercise of jurisdiction by those courts on any basis.

1. **Costs**
   1. Each party must at the party’s own expense promptly execute all documents and do or use best efforts to cause a third party to do all such things that another party may, from time to time, reasonably request in order to give effect to, perfect or complete this Deed and all transactions incidental to it.
   2. The parties will bear their own costs, including legal costs, in connection with the preparation and execution of this Deed.

# Execution

Executed as a deed.

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| Signed sealed and delivered by the General Manager of the ABCB Office on behalf of the Scheme Owner in the presence of: |  |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Signature of witness | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .  Signature of Chief Executive |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .  Name of witness (print) | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .  Name of Chief Executive (print) |

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| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .  Date | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .  Date |

***[Drafting Note: Choose correct signature block for the Contributor (where the Contributor is a company select the second signature block, otherwise select the first signature block) and delete the signature block which is not appplicable.]***

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| Signed, sealed and delivered by the Contributor in the presence of: |  |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .  Signature of witness | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .  Signature of Contributor |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .  Name of witness (print) | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .  Name of Contributor (print) |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .  Date | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .  Date |

OR

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| **Executed** by the Contributorin accordance with Section 127 of the Corporations Act 2001 |  |  |  |
|  |  |  |  |
| Signature of director of Contributor |  | Signature of director/company secretary/sole director and sole company secretary of Contributor  (Please delete as applicable) |  |
| Name of director of Contributor (print) |  | Name of director/company secretary/sole director and sole company secretary of Contributor (print) |  |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .  Date |  | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .  Date |  |