

GCCA EPD Tool: User Agreement

between

“User”

and

Global Cement and Concrete Association

Paddington Central,

6th Floor,

2 Kingdom Street,

W2 6JP,

London,

United Kingdom

“GCCA”

(individually **“Party”** and collectively **“Parties”**)

regarding the EPD Tool.

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Recitals

- (A) Whereas the development of an online tool and database for Environmental Product Declarations (“**EPD Tool**”) is a project of the GCCA.
- (B) Whereas the GCCA is a membership organization of cement companies from around the world committed to sustainable development.
- (C) Whereas the EPD Tool functions as an online platform with a basic interface through which Users can access their own secured area, upload data, produce reports and download those reports.
- (D) Whereas this Agreement provides for detailed rules governing the relationship between GCCA and User wishing to use the EPD Tool owned by GCCA.

Now, therefore, the Parties have concluded the following agreement:

1. DEFINITIONS

“**Agreement**” means this User Agreement.

“**Claimant Costs**” means the damages and legal costs payable by the User under:

- (a) each settlement of an Indemnified Claim;
- (b) each court order regarding an Indemnified Claim where that court order is not subject to appeal and can no longer be appealed.

“**Confidential Information**” means all information of relevance to the EPD Tool (however recorded, preserved or disclosed) hereafter disclosed by the User to GCCA including, but not limited to Inputs, production volumes, products composition, resource consumption (raw materials, fuels, constituents) emissions, and any other information that may be disclosed to ensure accomplishing the Purpose of the EPD tool such as business, financial condition, operations, sales data, assets, know-how, products, trade secrets, customers and prospective customers, market strategies and other commercially sensitive information related thereto and belonging to the User, as well as any disclosed information whose nature makes it obvious that it is confidential.

“**Counsel**” means qualified outside competition counsel selected by GCCA and approved by the User.

“**EPD Tool**” means an online calculation tool for producing draft EPDs for clinker, cement, concrete, aggregates, and precast products.

“**EPD**” means Environmental Product Declarations.

“**GCCA Representatives**” means employees, agents, officers, advisers and other representatives of GCCA listed in **Annex I** of this Agreement.

“**GreenDelta**” means GreenDelta GmbH, a limited liability company incorporated in Germany with registered company number HRB 92350.

“Indemnified Claim” means any claim, suit or proceedings, including any threatened claim, suit or proceedings, brought against a User by a third party based on an allegation that the EPD Tool or the EPD Tool software as delivered by GCCA, infringes any Intellectual Property Rights or violates any trade secret rights, excluding for the avoidance of doubt any claim, suit or proceedings (including threatened claim, suit or proceedings) relating to any applicable laws relating to data protection, privacy and security of personal data or the security of any applicable computer systems, computer software and hardware, telecommunications systems, network infrastructure and related equipment, including the EPD Tool.

“Inputs” means all information uploaded by the User into the EPD Tool, including information regarding production volumes, product composition, CO₂ emissions, and energy consumption.

“Intellectual Property Rights” means all types of intellectual property in all countries, including patents, utility models, trade marks, goodwill, copyright, design rights, database rights, and rights protecting Confidential Information.

“Legal Costs” means fees and expenses invoiced to the User by its external legal advisers for legal services reasonably required by the User regarding an Indemnified Claim.

“Purpose” means the management and development of the EPD Tool for the benefit of Users.

“Reports” means the reports which are generated by the EPD Tool at the User’s instruction by reference only to the Inputs.

“IT and Maintenance Services” means the services to be rendered by GCCA or GreenDelta as set out in section 2 below.

“User Representatives” means employees, agents, officers, advisers and other representatives of the User.

2. **SCOPE OF SERVICES RENDERED BY GCCA**

2.1 During the term of this Agreement, GCCA or its licensee GreenDelta, shall provide the following IT and Maintenance Services hereto:

- (a) host the EPD Tool;
- (b) grant online access to the EPD Tool and manage access to the EPD Tool;
- (c) provide the User with a password and access code;
- (d) run the EPD Tool 24/7;
- (e) maintain and support the EPD Tool;
- (f) provide new features, updates and enhancements;

- (g) provide a service hotline in the event of disruptions of the Services; and/or
- (h) provide support to the User in case of questions related to the tool or definitions and calculations necessary for the production of the Reports.

3. OBLIGATIONS OF THE USERS

3.1 In using the EPD Tool, the User shall comply with applicable law.

3.2 The User shall not use the EPD Tool other than to:

- (a) upload the User's Confidential Information to the EPD Tool;
- (b) search the EPD Tool for the Inputs; or
- (c) generate and use Reports for the User's own business use.

3.3 The User shall not:

- (a) grant access to the EPD Tool to anyone other than User Representatives;
- (b) share passwords and/or access codes for the EPD Tool with anyone other than User Representatives;
- (c) attempt to unlock or bypass any initialization or security systems utilized by the EPD Tool; or
- (d) share, use and/or transmit any portion of the EPD Tool via the Internet in contravention of this Agreement.

3.4 The User shall make sure the User Representatives do not use the EPD Tool on behalf of a third party or do anything that would breach clauses 3.2 or 3.3.

4. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

4.1 The User acknowledges that GCCA owns all Intellectual Property Rights in the EPD Tool.

4.2 The User will own all copyright in the Reports.

4.3 Other than as provided in clause 4.4, GCCA does not acquire any rights in the Inputs due to them being inputted into the EPD Tool.

4.4 The User grants GCCA a non-exclusive licence to use the Inputs to provide the Services.

4.5 The use of the Reports shall be under the full and sole responsibility of the respective User. In particular, any modification, adaptation and translation will be made at the respective User's own risk.

4.6 The User shall not use any trademark of GCCA without first obtaining GCCA's approval of the use.

5. **WARRANTIES AND REMEDIES**

5.1 To the maximum extent permitted by applicable law, the EPD Tool and the Confidential Information contained therein is provided "as is" and with all faults, without warranty of any kind, express or implied, including but not limited to, warranties of performance, merchantability, fitness for a particular purpose or non-infringement, except as otherwise explicitly warranted herein.

5.2 The User acknowledges that the EPD Tool and the Confidential Information contained therein might have defects, deficiencies or errors which may not be corrected by GCCA and/or its licensors.

5.3 GCCA warrants and represents that:

- (a) GCCA is a duly organized and validly existing business, at Paddington Central, 6th Floor, 2 Kingdom Street, London, United Kingdom, W2 6JP;
- (b) GCCA has obtained all necessary authorizations or other licenses in order to validly and legally conduct its business and render its Services in the United Kingdom and the Services under this Agreement;
- (c) so far as the directors of GCCA are aware (without requiring those individuals to have made enquiries to identify issues unknown to them), use of the EPD Tool under this Agreement does not infringe Intellectual Property Rights;
- (d) the execution of this Agreement is not subject to any prior authorization by, or registration with, authorities in the United Kingdom or any other competent authorities.

6. **INDEMNIFICATION**

6.1 Regarding each Indemnified Claim, GCCA shall pay the User:

- (a) the Claimant Costs, within 30 days of each settlement being made or each court order becoming final;
- (b) the Legal Costs, within 30 days of GCCA receiving copies of the invoices and time sheets issued by the external legal advisers.

6.2 Clause 6.1 is subject to clause 7.2. Clause 6.1 will survive the termination of this Agreement.

6.3 The indemnity in clause 6.1 is the User's sole remedy for costs, damages, losses, and liabilities arising from Indemnified Claims.

- 6.4 Where the User becomes aware of an Indemnified Claim, it shall:
- (a) promptly notify the details to GCCA, including details of all later developments;
 - (b) give the User sole conduct of the defence and settlement of the Indemnified Claim (at the User's own expense);
 - (c) not make any admission regarding the Indemnified Claim without the written consent of GCCA;
 - (d) promptly provide, at GCCA's expense, all documentation and information in its possession or control (including access to relevant staff of the User) as GCCA may reasonably require in conducting the defence and settlement of the Indemnified Claim;
 - (e) promptly stop using the EPD Tool if this is requested by GCCA to end any continuing infringement.
- 6.5 If GCCA cannot settle an Indemnified Claim on terms acceptable to GCCA, then GCCA will have the right to terminate this Agreement. If GCCA terminates this Agreement under this clause 6.3, GCCA shall return the part of the annual fee paid by the User that applies to the unused period after the date termination takes effect.

7. **LIABILITY**

- 7.1 GCCA assumes no liability, and shall have no liability, for (i) any damages based on the User's access to and/or use of the EPD Tool that occurs after GCCA provides the User with notice to cease using the EPD Tool due to an Indemnified Claim; (ii) an Indemnified Claim based on any modification of the EPD Tool by the User or at its direction; (iii) an Indemnified Claim based on the User's combination of the EPD Tool with third party programs, services, data, hardware, or other materials; or (iv) any trademark or copyright infringement involving any marking or branding not applied by GCCA or involving any marking or branding applied at the User's request.
- 7.2 GCCA shall not be liable for any loss of profit, loss of goodwill, indirect and consequential losses, and shall only be liable for losses, damages, liabilities, costs (including legal costs and experts' and consultants' fees), charges, actions, proceedings, claims, demands and expenses only to the extent resulting directly from a breach of this Agreement by GCCA. The liability of GCCA for losses arising out of, or in connection with, this Agreement, shall not exceed the annual fee paid by the User for the use of the EPD Tool, as agreed during the registration process and set out in clause 9.
- 7.3 No limitation in this Agreement shall exclude or limit any liability to the extent that it arises as a result of fraud by or on behalf of the liable Party.

8. **CONFIDENTIALITY**

8.1 **Obligations of Confidentiality**

8.1.1 **Obligations of the User**

- (a) The User shall not and shall make sure the User Representatives do not:
 - (i) ask for or agree to receive from GCCA any Confidential Information of another User of the EPD Tool; and
 - (ii) use the EPD Tool as a means of transferring Confidential Information to another User of the EPD Tool or receiving Confidential Information from another User of the EPD Tool.

8.1.2 **Obligations of GCCA**

GCCA shall keep the User's Confidential Information confidential and, except with the prior written consent of the User, shall:

- (i) not use or exploit the Confidential Information in any way except for the Purpose and for the performance of this Agreement;
- (ii) not disclose or make available the Confidential Information in whole or in part to any third party other than the GCCA Representatives listed in Annex I who need to know this Confidential Information for the Purpose; and
- (iii) procure that GCCA Representatives perform the Services related to the EPD Tool or supervise the performance of these Services with the utmost degree of care and skill and to the best of their ability.

GCCA may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory body, or by a court or other authority of competent jurisdiction.

8.2 **Exclusions**

The obligations in clause 8 do not apply to Confidential Information satisfying one or more of these conditions:

- (a) the Confidential Information is publicly known;
- (b) the Confidential Information is known to GCCA before the disclosure by the User, and is free from confidentiality restrictions; and/or
- (c) the Confidential Information is obtained separately by GCCA from someone else and is free from confidentiality restrictions.

8.3 **Confidentiality Measures**

To maintain confidentiality, GCCA shall apply to the Confidential Information the appropriate security measures and the appropriate degree of care, in order to protect the Confidential Information from unauthorized disclosure, access, copying or use. For this purpose, this Agreement sets out safeguards and procedures designed to prevent any

inappropriate sharing of Confidential Information in a manner that could result in the violation of applicable competition laws. These safeguards and procedures include:

- (a) **Team Members** - GCCA shall list in Annex I all GCCA Representatives who have received or are receiving (or likely to receive) Confidential Information or having or likely to have (or have sight of or access to) Confidential Information and shall promptly inform the User of any updates to Annex I. CEO as designated compliance officer, inter alia, has the right to delegate responsibility for preparing and maintaining an up to date list of the individuals listed in Annex 1 to a representative at manager level listed on Annex 1.
- (b) **Discussion** –Individuals listed in Annex I may only discuss Confidential Information with other individuals listed in Annex I and, in exceptional cases where the management of the EPD Tool so requires, with Counsel.

8.4 **Return of Confidential Information**

- (a) Upon the termination of this Agreement, GCCA shall:
 - (i) destroy or return to the User all documents and materials (and any copies) containing, reflecting, incorporating, or based on the User's Confidential Information, unless otherwise required to keep information by applicable laws; and
 - (ii) erase all the User's Confidential Information from its computer systems or where it is stored in electronic form (to the extent possible), unless otherwise required to keep information by applicable laws.
- (b) If GCCA develops or uses a product or a process which, in the reasonable opinion of the User, might have involved the use of any of the User's Confidential Information, GCCA shall, at the request of the User, supply to the User information reasonably necessary to establish that the User's Confidential Information has not been used or disclosed.

8.5 **Remedies**

- (a) The Parties acknowledge and agree that:
 - (i) each Party shall be entitled to compensation by the other Party for any direct damage resulting from a breach of the provisions of this Agreement by the other Party; and
 - (ii) in addition, in the event of an actual or threatened violation of this Agreement, each Party shall be entitled to seek the enforcement of this Agreement by means of an injunction or specific performance.

- (b) The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law.

8.6 **Survival of obligations**

This clause 8 will survive the termination of this Agreement.

9. **FEES AND PAYMENT FOR SERVICES**

- 9.1 The User, owes an annual fee for the use of the EPD Tool as agreed during registration. This fee is invoiced by GCCA and payable by the User to GCCA.
- 9.2 GCCA reserves the right to change or amend the annual fee subject to three (3) months written notification. Changes shall not affect prices already invoiced to the User.
- 9.3 All payment must be received within 30 days of invoice receipt. GCCA reserves the right to suspend all client access to Services for all payments overdue to the GCCA by 30 days or more.

10. **TERM AND TERMINATION AND CONSEQUENCES**

10.1 **Term and Termination**

- (a) This Agreement shall be concluded for an initial period of one (1) year from the date of signature by both Parties, unless terminated in accordance with the provisions in section 10.1(c) below.
- (b) Upon expiry of the initial period, the Agreement shall automatically be renewed for periods of one (1) year, unless terminated in accordance with section 10.1(c) below.
- (c) This Agreement can be terminated by any Party at any time with a written notice of one (1) month.
- (d) GCCA and the User can terminate this Agreement for cause without notice in writing in the event that a Party:
 - (i) is in breach of its material obligations under this Agreement; and/or
 - (ii) is in breach of the confidentiality provisions in this Agreement.

10.2 **Consequences of Termination**

- (a) On expiry of the termination period (when terminated for cause immediately):
 - (i) the User shall stop using the EPD Tool;

- (ii) GCCA shall stop using the Inputs other than to comply with clause 10.2(b).
- (b) GCCA must upon request of the User extract the Input from the EPD Tool as uploaded by the respective User and shall return the data to the respective User in the format as requested by such User.
- (c) Where the User terminates this Agreement pursuant to clause 10.1(c), GCCA shall, on a pro rata basis, repay any fees paid in advance for any Services which have not been provided.
- (d) The termination or expiry of this Agreement shall not give rise to the right for User to recover damages or to indemnification of any nature or kind, regardless of whether the User's business depends on timely and continuous access to the EPD Tool.

11. MISCELLANEOUS

11.1 Entire Agreement

This Agreement constitutes and expresses the entire agreement between the Parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous oral or written agreements, representations, understandings and the like between the Parties.

11.2 Amendments and Modifications

This Agreement may not be modified, amended, altered or supplemented, in whole or in part, except by a written agreement signed by the Parties.

11.3 Notices

Any notice required to be given pursuant to this Agreement shall be in writing and in English. Delivery shall be made by registered mail or by an internationally recognized courier that verifies delivery to the relevant address set out below or to such other address of which either Party notifies the other pursuant to this provision:

if to the User:

As per Main Contact Name on Page 1

if to GCCA:

Paddington Central,
6th Floor,
2 Kingdom Street,
London,
W2 6JP
United Kingdom
Attention: Nicolas Antoniou
Email: nicolas.antoniou@gccassociation.org

11.4 Severability

If any section of this Agreement is found by any competent authority to be void, invalid or unenforceable, such provision shall be deemed to be deleted from this Agreement and the remaining sections of this Agreement shall continue in full force. In this event, the Agreement shall be construed, and, if necessary, amended in a way to give effect to, or to approximate, or to achieve a result which is as close as legally possible to the result intended by the section hereof determined to be void, illegal or unenforceable.

11.5 Waivers

The rights of a Party shall not be prejudiced or restricted by any indulgence or forbearance extended to any other Party. A waiver to pursue any breach of contract by a Party shall not operate as a waiver of the respective right or as a waiver to claim any subsequent breach. Any provision of this Agreement may be waived only by a written statement of the waiving Party.

11.6 Legal Succession and Assignment

Should a Party hereto become the subject of sale, merger or any other form of reorganization involving a third party, the terms of this Agreement shall bind the successor in law to such Party as if such successor were an original Party hereto. Subject to the aforesaid, the rights of the Parties under this Agreement are not assignable and shall not be transferred without the prior written consent of the other Party, which shall not be withheld unreasonably.

11.7 Governing Law and Jurisdiction

This Agreement will be deemed to be made and entered into in the United Kingdom, and be governed by, and construed and enforced in accordance with, including in relation to the rights and obligations of the Parties, including all non-contractual obligations arising under or in connection with this Agreement, the laws of England and Wales, without regard to its principles of conflicts of laws. The Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales in respect of any claim, dispute or difference arising out of or in connection with this Agreement, and/or any non-contractual obligations arising in connection with this Agreement.

Annex I
GCCA Representatives

GCCA

Thomas Guillot, CEO

Nicolas Antoniou

Andrea Stone

Andrew Minson

Emily Andersen

GreenDelta, Alt-Moabit 130, 10557 Berlin, Germany

Andreas Ciroth, CEO

Friedrich Halstenberg

Bach Tran