



NABERS ASSESSMENT COMPANY AGREEMENT

TERMS AND CONDITIONS

1. PURPOSE OF THIS AGREEMENT

1.1. The National Australian Built Environment Rating System (NABERS) is a performance based rating system that measures the environmental performance during operation of existing buildings in the following categories:

- Commercial offices (whole building, base building and tenancies);
- Hotels;
- Shopping centres;
- Data Centres (whole facility, infrastructure and IT equipment); and - Such other building types as may be adopted in the future.

1.2. The NSW Department of Planning, Industry and Environment is the National Administrator of NABERS and in that role administers the accreditation of NABERS assessors which allows them to carry out the NABERS Rating Process and obtain NABERS Ratings.

1.3. The Assessment Company employs Accredited Assessors and in that capacity requires the ability to be able to use NABERS Materials and NABERS logos. It also pays fees and effects insurances in respect of Employed Assessors.

1.4. The purpose of this Agreement is to set out the rights and obligations of the Assessment Company applicable to the NABERS Process.

2. OVERVIEW OF ASSESSOR OBLIGATIONS

This Agreement provides certain rights to the Assessment Company to facilitate its participation in NABERS and to ensure its Employed Assessors are able to carry out the NABERS Process and obtain NABERS Ratings. It also sets out Assessment Company obligations including but not limited to:

- Use of NABERS Logos
- Use of NABERS Intellectual Property
- Ensuring only accredited assessors carry out the NABERS Rating Process
- Compliance with suspension, termination or other sanctions imposed on Employed Assessors
- Insurance
- Indemnity
- Release
- Confidentiality

- Keeping of records.

Definitions of capitalised terms in this Agreement are set out at Clause 21.

3. TERM OF AGREEMENT

- 3.1. The offer set out in this Agreement is made when these terms and conditions are made available to the Assessment Company by the National Administrator.
- 3.2. This Agreement commences once the Assessment Company accepts these terms and conditions by signing the signature page at the end of these terms and conditions and uploading it to the Assessment Company's "My Organisation" page on the NABERS website.
- 3.3. This Agreement shall continue until terminated in accordance with clause 9 of this Agreement.
- 3.4. The Assessment Company and the National Administrator acknowledge that this Agreement may be brought to an end with notice in accordance with clause 9.13 where this Agreement is to be replaced by a new version.

4. EMPLOYED ASSESSORS

4.1. Obligation of Assessment Company with respect to Employed Assessors

- 4.2. The Assessment Company shall ensure that only Employed Assessors with current accreditation under an Accredited Assessor Agreement with the National Administrator carry out the NABERS Rating Process.
- 4.3. The Assessment Company shall ensure that an Employed Assessor who is a Trainee Assessor under an Accredited Assessor Agreement complies with the restrictions and obligations imposed on the Employed Assessor in that respect under that agreement.
- 4.4. The Assessment Company agrees and acknowledges that the validity of this Agreement is contingent upon the Assessment Company at all times during the term of this Agreement being the employer of one or more Employed Assessors.

4.5. Obligation of Assessment Company in respect of suspension, termination or other sanction imposed on Employed Assessor

- 4.6. The Assessment Company must take all reasonable steps to ensure that an Employed Assessor, in respect of any activities relating to NABERS, acts in accordance with:
 - (a) any suspension or termination of the Employed Assessor's accreditation; or
 - (b) any other determination or sanction imposed under such determination in respect of the Employed Assessor reached by the National Administrator in accordance with the NABERS Rating Auditing Procedure.

5. NABERS AUDITS

5.1. The Assessment Company acknowledges that a NABERS Auditor, on the National Administrator's behalf, may carry out an Audit of an Assessor's Rating Materials and NABERS Ratings, and any other work carried out as part of the Rating Process.

5.2. The Assessment Company must:

- (a) take all reasonable steps to cooperate with the National Administrator and the NABERS Auditor in respect of any Audit.
- (b) take all reasonable steps to ensure that an Employed Assessor cooperates with the National Administrator and the NABERS Auditor in respect of any Audit.
- (c) upon written request and within a reasonable timeframe provide all documentation and information in its possession necessary to enable the NABERS Auditor to conduct an Audit of an Employed Assessor's Rating Materials and activities carried out as part of the Rating Process, including access to (and where relevant, copies of) all records, books of account, documents, information, premises, equipment and things which the NABERS Auditor reasonably considers necessary to satisfy itself that the Employed Assessor has complied with the requirements of the Scheme, including the NABERS Rules, the NABERS Auditing Policy, Auditing Procedure, Code of Practice, and other Process Documents.
- (d) work closely with the NABERS Auditor to ensure that the correct interpretation and application of the Rules, Rulings, and Process Documents has been made, and sufficient documentary evidence is provided.

5.3. The Assessment Company agrees and acknowledges that a range of measures and sanctions can be applied to an Employed Assessor by the National Administrator following and Audit in accordance with the NABERS Rating Auditing Procedure. These include:

- (a) Revoking the NABERS Rating and re-issuing a different NABERS Rating Certificate
- (b) Warning letter
- (c) Requirement for future rating work to be supervised
- (d) Requirement for future rating work to undergo an Audit
- (e) Accreditation status for one or more categories be changed to Trainee Assessor
- (f) Requirement to undergo training
- (g) Payment of costs for any of the above
- (h) Suspension of accreditation for one or more categories (i) Termination of this Agreement.

6. ASSESSMENT COMPANY'S USE OF NABERS LOGOS

6.1. The Assessment Company agrees and acknowledges that all NABERS Logos are owned by the National Administrator and that the National Administrator reserves the right at all times to specify the manner in which any person may use the NABERS Logos.

6.2. The National Administrator grants to the Assessment Company a limited, personal, royalty free, non-exclusive and non-transferable right to use and refer to the NABERS Logos in connection with the Assessment Company's activities in respect of NABERS and the activities of its Employed Assessors subject to these terms and conditions.

6.3. The Assessment Company agrees that in any exercise of this licence, it will comply in all respects with the NABERS Brand Guidelines and any other reasonable guidelines or policies regarding the use of NABERS Logos.

6.4. Except as provided in the NABERS Brand Guidelines, the Assessment Company has no right to:

- (a) Use or make reference to the NABERS Logos in any marketing, advertising or public announcements;
- (b) Alter or modify the NABERS Logos in any way;
- (c) Reproduce, sub-licence, or otherwise deal with the NABERS Logos, or allow any other person to do so, for any purpose.

6.5. The Assessment Company must not at any time during or after the term of this Agreement, register or attempt to register, or use as a trade mark, business or company name, email address, phone number or domain name, the NABERS Logos or any device or word substantially identical with or deceptively similar to any of the NABERS Logos.

6.6. Upon the termination of this Agreement the Assessment Company must cease to use or display the NABERS Logos for any purpose whatsoever including without limitation the use of NABERS Logos on stationery, advertising, promotional and sales material, websites and online material and any other materials which incorporate the NABERS Logos.

7. NABERS INTELLECTUAL PROPERTY

7.1. The Assessment Company warrants that in carrying out any activities under this Agreement or in respect of any activities relating to NABERS it will not infringe any Intellectual Property rights of the National Administrator or of any third party.

7.2. The Assessment Company acknowledges and agrees that the National Administrator owns all Intellectual Property rights in:

- (a) all NABERS Software, Methodology, Algorithms, Rules, Rulings, Validation Protocols, NABERS Materials and other Process Documents;
- (b) all Rating Materials and NABERS Ratings brought into existence by the Assessment Company or its Employed Assessors, and that such rights in respect of these materials brought into existence after the date of this Agreement shall vest upon their creation in the National Administrator.

7.3. The Assessment Company acknowledges and agrees that the National Administrator may use, adapt and change the Rating Materials created by the Assessment Company, or its Employed Assessors, for any purpose.

7.4. The National Administrator grants to the Assessment Company a non-exclusive, nontransferrable licence to use NABERS Materials for the sole purpose of facilitating the carrying out NABERS Ratings by its Employed Assessors and for no other purpose whatsoever unless where otherwise agreed by the National Administrator.

7.5. The Assessment Company must ensure that it obtains irrevocable written consent, for the benefit of the National Administrator, from all authors of any work incorporated in Rating Materials (where those materials or that work is created by or on behalf of the Assessment Company or by its Employed Assessors), for the use of such Rating Materials or work by the National Administrator in any manner and for any purpose it chooses.

- 7.6. The National Administrator acknowledges and agrees that any Background Intellectual Property of the Assessment Company remains vested in the Assessment Company and shall not be modified, adapted or altered without the express written approval of the Assessment Company and shall only be used by the National Administrator for the purpose for which it was provided.

8. SUSPENSION OR TERMINATION OF EMPLOYED ASSESSOR

8.1. Suspension or termination of an Employed Assessor in respect of fees and insurance

8.2. The Assessment Company acknowledges and agrees that an Employed Assessor's accreditation under the Accredited Assessor Agreement may be suspended or terminated in circumstances where:

- (a) any fees required to be paid under the Accredited Assessor Agreement have not been paid; or
- (b) evidence that insurances required to be effected under the Accredited Assessor Agreement has not been provided,

regardless of whether the failure to pay the fees or effect the insurances is that of the Employed Assessor or the Assessment Company which may do such things on the Employed Assessor's behalf.

8.3. Suspension or termination of an Employed Assessor following audit or breach

8.4. The Assessment Company acknowledges and agrees that an Employed Assessor's accreditation under an Accredited Assessor Agreement may be suspended by the National Administrator:

- (a) in response to a determination reached by the National Administrator following an Audit in accordance with the NABERS Rating Auditing Procedure; or
- (b) as a result of action taken by the National Administrator in respect of a breach by an Employed Assessor of its obligations under its Accredited Assessor Agreement.

9. TERMINATION

9.1. Termination for other default

9.2. Without prejudice to any other right which the National Administrator may have under this Agreement or at law, if a breach of this Agreement occurs, other than an Event of Default, the National Administrator may give a Notice of Intention to Terminate to the Assessment Company.

9.3. Without limiting the bases on which such notice may be given, a Notice of Intention to Terminate may be given as a result of breach of any terms and conditions relating to:

- (a) Breach of obligations with respect to ensuring that only accredited Employed Assessors carry out the Rating Process (clause 4.2);
- (b) Breach of obligations with respect to suspended or sanctioned Employed Assessors (clause 4.5);
- (c) Breach of obligations with respect of audits (clause 5);
- (d) Breach of obligations with respect to NABERS Logos (clause 6);
- (e) Breach of obligations with respect to NABERS Intellectual Property (clause 7); (f) Breach of obligations with respect of insurance (clause 10); (g) Breach of Confidentiality obligations (clause 13).

- 9.4. The Notice of Intention to Terminate will state the breach that in the opinion of the National Administrator has occurred, shall contain any supporting information, and provide the Assessment Company with an opportunity to respond.
- 9.5. The minimum time for response by an Assessment Company to a Notice of Intention to Terminate shall be 15 working days from the provision of the notice. Any such response shall be in writing to the National Administrator.
- 9.6. If following a response referred to at clause 9.5 the National Administrator is satisfied that no breach has occurred it shall revoke the Notice of Intention to Terminate.
- 9.7. If following consideration of the response referred to at clause 9.5 the National Administrator remains of the opinion that a breach has occurred it may give further notice in writing to the Assessment Company requiring that the following items be provided in writing to the National Administrator:
- (a) a plan for the cure of the breach within a timeframe specified by the National Administrator and/or
 - (b) an undertaking that the breach will not occur again.
- 9.8. Where:
- (a) the National Administrator receives a response in accordance with clause 9.7 that is in its opinion satisfactory; and
 - (i) having allowed the specified time (referred to at clause 9.7(a) during which the breach has in the opinion of the National Administrator been cured; and/or
 - (ii) an undertaking (referred to at clause 9.7(b) has been given to the satisfaction of the National Administrator, the National Administrator shall by notice in writing revoke the Notice of Intention to Terminate.
- 9.9. Where:
- (a) no response is provided by the Assessment Company in accordance with clause 9.7 in the timeframe specified; or
 - (b) no plan for the cure of the breach, or undertaking (as required), is provided in accordance with 9.7; or
 - (c) the plan for the cure of the breach referred to at clause 9.7(a) is not complied with within the specified time,
 - (d) an undertaking referred to clause 9.7(b), has not been complied with, then the National Administrator may immediately provide the Assessment Company with a Notice of Termination.
- 9.10. Termination by the Assessment Company**
- 9.11. The Assessment Company may terminate this Agreement by giving 20 working days notice in writing to the National Administrator.
- 9.12. Termination by National Administrator**
- 9.13. The National Administrator may terminate this Agreement by giving 3 months notice in writing that:
- (a) the NABERS scheme is coming to an end; or
 - (b) this Agreement will be replaced by a new Assessment Company Agreement applicable to all NABERS Assessment Companies.

9.14. Notwithstanding any other provision of this Agreement, this Agreement may be immediately terminated by the National Administrator by notice in writing where the National Administrator is of the reasonable view that no Employed Assessors are employed by the Assessment Company.

9.15. Arrangements upon termination

9.16. Upon termination of this Agreement (except where the Assessment Company enters into a replacement agreement referred to in clause 9.13), the Assessment Company must within 20 working days:

- (a) cease use of all NABERS Logos and NABERS Intellectual Property and NABERS materials and products, including but not limited to computer software, and the Process Documents;
- (b) withdraw any publicly available promotional materials consisting of, incorporating or displaying any NABERS trademarks or NABERS Logos;
- (c) cease and thereafter refrain from representing that the Assessment Company is associated in any way with the National Administrator or the NABERS Scheme.

9.17. Termination of this Agreement shall be without prejudice to the continuing enforceability of any rights or obligations of the National Administrator accrued at the time of termination.

9.18. Clauses to apply following termination

9.19. The operation of:

- (a) Clause 6 - NABERS Logos
- (b) Clause 7 – NABERS IP
- (c) Clause 10 - Professional Indemnity Insurance
- (d) Clause 11 – Indemnity
- (e) Clause 12 – Release
- (f) Clause 13 – Confidentiality
- (g) and any other provision which expressly or by implication from its nature is intended to continue.

survive the termination of this Agreement.

10. INSURANCE

10.1. For the purpose of demonstrating compliance with:

- (a) the Assessment Company's obligations with respect to insurance under this clause, written evidence of insurances effected must be provided immediately to the National Administrator upon written request; or
- (b) an Employed Assessor's obligations with respect to insurance, certificates of currency and insurance expiry dates are provided to the National Administrator in accordance with the NABERS Insurance Procedure.

10.2. The Assessment Company may take necessary action on behalf of an Employed Assessor to ensure compliance with the Employed Assessor's insurance requirements set out in the Accredited Assessor Agreement. Failure by the Assessment Company to effect and maintain insurances in respect of an Employed Assessor may result in

the National Administrator taking action under the Accredited Assessor Agreement to suspend or terminate the Employed Assessor's accreditation under that agreement.

- 10.3. The Assessment Company at all times during the term of this Agreement must effect and maintain to the satisfaction of the National Administrator the following insurance policies:
- (a) **Workers' compensation insurance** that covers the Assessment Company, its Employed Assessors and its employees. If the Assessment Company is not legally able to hold workers compensation insurance, the Assessment Company must ensure that it has effected a personal accident insurance policy to the level of risk associated with carrying out the Rating Process, a minimum cover of \$100,000 for death and permanent disability, and sufficient cover for temporary disability.
 - (b) **Public liability insurance** covering the Assessment Company, its Employed Assessors and other employees and agents for any death, injury, damage or loss to other persons arising from the carrying out of the Ratings Process. The Assessment Company must maintain such insurance current for the duration of this Agreement and for an amount of not less than ten (10) million dollars for any single occurrence.
 - (c) **Professional indemnity insurance** covering the Assessment Company and Employed Assessors for breaches of professional duty (whether owed in contract or otherwise) in carrying out the Rating Process. The Assessment Company must maintain such insurance current for the duration of this Agreement and six (6) years thereafter, and for an amount of not less than two (2) million dollars for any single occurrence.
- 10.4. The Assessment Company must not do anything or fail to do anything that would allow any insurer to reduce cover or void a policy of insurance required under this Agreement.
- 10.5. The Assessment Company acknowledges and agrees that the National Administrator is not obliged to accept any material from an Employed Assessor as part of the Ratings Process, or provide a NABERS Rating, unless and until the Assessment Company and Employed Assessor has complied strictly with the obligations of this clause.
- 10.6. For the purposes of meeting the requirements of this clause, the Assessment Company acknowledges that insurers must be listed by the Australian Prudential Regulation Authority (APRA) as being regulated by the APRA, or listed by Lloyds underwriters. Lists appear on the APRA website at: <http://www.apra.gov.au/>.

11. INDEMNITY

- 11.1. For the purposes of the indemnity set out in this clause, a reference to the National Administrator includes a reference to the Crown in right of the State of NSW, the Minister for the Environment, the Chief Executive of the Department of Industry, Planning and Environment (DPIE) and the employees and agents of DPIE.
- 11.2. The Assessment Company will at all times indemnify, hold harmless and defend the National Administrator from and against any cost, claim, loss (including consequential loss arising from inaccurate NABERS Ratings or Ratings Materials of Employed Assessors in the Ratings Process) or, damage, liability or expense which the National Administrator pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) resulting from:
- (a) any act or omission of the Assessment Company, including any unlawful, negligent, reckless or deliberately wrongful act or omission of the Assessment Company (or its employees, agents or subcontractors) in the carrying out of any activities related to NABERS or otherwise in the performance of this Agreement;

- (b) any act or omission of an Employed Assessor, including any unlawful, negligent, reckless or deliberately wrongful act or omission of the Employed Assessor in the course of the Rating Process or in the carrying out of any activities as an Accredited Assessor or otherwise in the performance of the Accredited Assessor Agreement;
- (c) any breach of this Agreement by the Assessment Company;
- (d) the use of or reliance on by the National Administrator on any Rating Materials provided by an Employed Assessor as part of an Assessment or Ratings Process; and
- (e) any change to a NABERS Rating based on an Employed Assessor's Rating Materials following an Audit.

11.3. The Assessment Company's liability to indemnify the National Administrator under this clause will be reduced proportionally to the extent that any act or omission involving fault on the part of the National Administrator contributed to the relevant cost, liability, loss, damage or expense.

11.4. This proportional reduction does not apply in respect of anything resulting from a change to a NABERS Rating in accordance with a determination reached by the National Administrator following an Audit in accordance with the NABERS Rating Audit Procedure.

12. RELEASE

12.1. The Assessment Company acknowledges and agrees that:

- (a) any activities carried out as an Assessment Company or otherwise in the performance of this Agreement; or
- (b) any activities of an Employed Assessor in the course of the Rating Process or in the performance of obligations under an Accredited Assessor Agreement or otherwise in connection with NABERS,

are done at its own risk.

12.2. The Assessment releases the National Administrator from and against all claims and proceedings relating to any cost, liability, loss, damage or expense to the Assessment Company that may arise from:

- (a) the carrying out of any activities carried out as an Assessment Company or otherwise in the performance of this Agreement or in connection with NABERS;
- (b) the carrying out of any activities by an Employed Assessor in the course of the Rating Process or in performance of an Accredited Assessor Agreement or otherwise in connection with NABERS;
- (c) the consequences of any inaccurate Rating Material provided by an Employed Assessor to the National Administrator in respect of a NABERS Rating in the course of the Rating Process;
- (d) the success or failure of the NABERS Scheme;
- (e) any suspension of the accreditation of an Employed Assessor under an Accredited Assessor Agreement; and
- (f) any determination reached by the National Administrator in accordance with the NABERS Rating Audit Procedure in respect of an Employed Assessor.

12.3. Notwithstanding any other clause in this Agreement, neither party shall have any liability to the other for or in connection with any loss suffered by the other which is indirect or consequential

(except for consequential loss referred to in clause 11.2 above) such as loss of profits , loss or opportunity or loss of bargain.

13. CONFIDENTIALITY

13.1. Subject to clause 13.2, the Assessment Company shall not, without the prior written approval of the National Administrator, make public or disclose to any third party any Confidential Information, and in giving such written approval, the National Administrator, may impose such terms and conditions as it thinks fit.

13.2. Notwithstanding clause 13.1 the Confidential Information belonging to the National Administrator shall only be disclosed by the Assessment Company to an Employed Assessor as is necessary for the Employed Assessor to fulfill its obligations under an Accredited Assessor Agreement.

13.3. The Assessment shall take all reasonable steps to ensure that it complies with this clause 13.

13.4. The Assessment Company shall not make or allow to be made copies of or extracts of all or any part of the Confidential Information except for the purpose of this Agreement.

13.5. This clause shall continue to bind the Assessment Company after the date of termination of this Agreement.

13.6.

13.7. Notwithstanding any other provision of this Agreement, the Assessment Company may:

- (a) pass on Confidential Information where it is reasonably necessary for the Assessment Company to seek professional advice or to defend itself from any suit or claim, provided that such Confidential Information is disclosed under terms no less onerous than the terms of this clause; and
- (b) retain one copy of any document solely for the purpose of its own records and upon the continuing duty of confidence set out in this Agreement.

14. DISPUTE RESOLUTION

14.1. Any dispute in respect of this Agreement shall be dealt with under the NABERS Dispute Resolution Policy.

14.2. Nothing contained in the NABERS Dispute Resolution Policy to resolve a dispute will deny the National Administrator the right to:

- (a) Issue a Notice of Intention to Terminate or Notice of Termination under clause 9; or
- (b) seek injunctive or other urgent relief from an appropriate court where failure to obtain such relief would cause irreparable damage to the National Administrator or its business.

15. NATURE OF RELATIONSHIP

15.1. No employment or agency relationship arises between National Administrator and Assessment Company under this Agreement

15.2. The Assessment Company must not represent or hold self out as being an agent of the National Administrator in respect of NABERS

15.3. The Assessment Company acknowledges that the National Administrator makes no representations in respect of any work that may arise following accreditation under this Agreement.

16. RECORDS

16.1. During the Term, the Assessment Company shall, upon receipt of written request and upon reasonable notice, provide the National Administrator, its authorised representatives and/or auditors appointed by it with access to (and where relevant, copies of) all records, books of account, documents, information, premises, equipment and things which the National Administrator reasonably considers necessary to satisfy itself that the Assessment Company and any Employed Assessor has or is continuing to comply with the requirements of the Scheme, including the NABERS Rules, the NABERS Auditing Policy, Auditing Procedure, Code of Practice, and the Processes and Procedures.

16.2. The Assessment Company shall provide the National Administrator or its authorised representative with the information and reports referred to in clause 16.1 within a reasonable time of any request.

16.3. The Assessment Company must retain all NABERS Rating Materials for seven years.

17. ASSIGNMENT

17.1. The Assessment Company shall not assign, in whole or in part, the benefits under this Agreement, without the prior written consent of the National Administrator.

17.2. The National Administrator shall have the absolute right to assign all its rights, powers and obligations arising under this Agreement to any person, government department, agency or authority, company or other entity appointed as National Administrator of NABERS, by notice in writing to the Assessment Company, and the Assessment Company shall be deemed to have entered into a contract with the assignee upon the same terms as this Agreement.

17.3. Upon receipt of a notice of assignment under Clause 17.2, the Assessment Company agrees to observe and perform all its liabilities and obligations arising under this Agreement that are to be observed or performed on or after the assignment for the benefit of and to the assignee as if the assignee was a party to this Agreement in place of the National Administrator.

18. PROPER LAW

18.1. This Agreement shall in all respects be governed by the law of the State of New South Wales.

19. NOTICES

19.1. Any notice that the National Administrator may serve on the Assessment Company under this Agreement shall be taken to be effectively served:

- (a) if sent to the email address set out on the Assessment Company's "My Organisation" Page on the NABERS Website; or
- (b) if sent by post to the registered office of the Assessment Company, unless otherwise agreed in writing by the parties.

19.2. Any notice that the Assessment Company may serve on the National Administrator under this Agreement must be served by sending the notice to nabers@environment.nsw.gov.au or in writing to:

NABERS Team
Department of Planning, Industry and Environment
Locked Bag 5022

20. GENERAL

- 20.1. The parties shall do all acts and things necessary for the complete performance of their obligations under this Agreement.
- 20.2. This Agreement constitutes the entire agreement and understanding between the parties as to the subject matter of this Agreement. Upon execution of this Agreement, any prior arrangements, agreements, representations or undertakings as to the subject matter of this agreement are superseded.
- 20.3. No failure or delay on the part of any party in the execution of any right, power or remedy hereunder shall operate as a waiver thereof nor shall any exercise of such right, power or remedy preclude any other or further exercise of any other right, power or remedy hereunder.
- 20.4. No variation, modification or waiver of any provision of this Agreement nor consent to any departure by any party, shall in any event be of any force or effect unless the same shall be confirmed in writing, signed by the parties hereto or, in the case of waiver or consent, the party giving that waiver or consent, and then such variation, modification, waiver or consent shall be effective only to the extent for which it may be made or given.

21. DEFINITIONS

Accredited Assessor Agreement means the agreement between an Assessor and the National Administrator for Accreditation of the Assessor to carry out the Ratings Process and obtain NABERS Ratings.

Annual Accreditation Fee – means the annual fee payable to the National Administrator in accordance with the NABERS Fee and Payment Procedure to commence and thereafter extend the Assessors accreditation under this Agreement.

Assessment Company – means the company that has entered into this NABERS Assessment Company Agreement with the National Administrator and which employs Employed Assessors and may include for the purposes of the Agreement a sole trader employing an Employed Assessor.

Audit – means an audit of a NABERS Rating in accordance with the NABERS Auditing Policy and NABERS Rating Auditing Procedure – both available on the NABERS Members' website at www.nabers.gov.au/members.

Background Intellectual Property - means intellectual property in any information or literature owned by the Assessor that does not constitute any Rating Materials which is supplied by the Assessor to the National Administrator in the course of a NABERS Rating or the Rating Process.

Confidential Information – means any information that is by its nature confidential; and

- is designated by the National Administrator as confidential; or - the Assessment Company knows or ought to know is confidential but does not include information which:
- is in, or comes into, the public domain through no fault of the recipient;
- is lawfully received from a third party free of any obligations of confidence at the time of its disclosure;
- is independently developed by the recipient; or
- is required by law, by court or by government order to be disclosed where reasonable prior notice has been given to the National Administrator
- is the subject of a notice in writing from the National Administrator to the Assessment Company stating that the information is no longer confidential.

Employed Assessor – means a person who has entered into an Accredited Assessor Agreement with the National Administrator, is employed by the Assessment Company, and whose role includes carrying the Rating Process and obtaining NABERS Ratings whether in the capacity of an Accredited Assessor, or an Trainee Assessor as defined under the Accredited Assessor Agreement.

Intellectual Property – means all present and future intellectual property rights, titles and interests, wherever subsisting throughout the world, whether registered or not, whether created before, on or after the date of this Deed including copyright, trademarks, patents, designs, trade secrets and knowhow.

NABERS – means the National Australian Built Environment Rating System.

NABERS Accreditation Procedure – means NABERS Accreditation Procedure - available under Resources>Process Documents on the NABERS Members' website at www.nabers.gov.au/members.

NABERS Auditor – means a person appointed by the National Administrator to conduct audits in accordance with the NABERS Rating Auditing Policy and Procedure.

NABERS Brand Guidelines – means the NABERS Brand Guidelines - available under Resources>Process Documents on the NABERS Members’ website at www.nabers.gov.au/members.

NABERS Dispute Resolution Policy – means the NABERS Dispute Resolution Policy - available under Resources>Process Documents on the NABERS Members’ website at www.nabers.gov.au/members.

NABERS Logos – means the NABERS trading name, NABERS logos and other trademarks developed by the National Administrator in the course of administering NABERS and set out in the Brand Guidelines as updated from time to time and available under Resources>Process Documents on the NABERS Members’ website at www.nabers.gov.au/members.

NABERS Materials - means the National Administrator’s material and documentation relating to NABERS including but not limited to the NABERS Rating, computer software and the Process Documents available under Resources>Process Documents on the NABERS Members’ website at www.nabers.gov.au/members.

NABERS Methodology – means the algorithms and data that enable the calculation of a NABERS rating based on specified user inputs.

NABERS Rating – the accredited rating provided by the National Administrator in respect of a building based on the Rating Process performed by the Assessor and the provision of Rating Materials to the National Administrator.

National Administrator – means the Department of Planning, Industry and Environment acting for and on behalf of the Crown in right of the State of NSW.

Profile Page – means the ‘My profile’ page detailing (but not limited to); the Assessors name, title, employee status contact details, accreditation status, preferences for this information to be shared to the public and with the administrators of the Commercial Building Disclosure program.

Process Documents - means the key processes and procedure documents as updated from time to time that underpin and govern the NABERS Program, which include but are not limited to the;

- NABERS Rules for Collecting and Using Data (the Rules), including all NABERS documents formerly and currently called Validation Protocols;
- published NABERS Rulings (Rulings) and technical advice provided by the National Administrator;
- NABERS Accredited Assessor Code of Practice;
- NABERS Brand Guidelines;
- NABERS Process Outline;
- NABERS Dispute Resolution Procedure;
- NABERS Information Transfer Procedure;
- NABERS Renewal Procedure;
- NABERS Accreditation Procedure;
- NABERS Rating Auditing Procedure;
- NABERS Auditing Policy;
- NABERS Rating Auditing Procedure;
- NABERS Insurance Procedure;
- NABERS Fee and Payment Procedure.

These documents are amended periodically and are available on the NABERS Members’ website at www.nabers.gov.au/members (under Resources>Process Documents).

Rating Materials - means anything brought into existence, or required to be brought into existence, as part of, or for the purposes of carrying out, or in connection with, any Assessment or Rating Process carried out by the Assessor under this Agreement including all data and information of the Assessor's client.

Rating Process – means all activities associated with the assessment of an existing building's overall environmental performance during operation required under this Agreement to be carried out in accordance with NABERS Rules for performing a Rating (including Validation Protocols), any relevant Rulings or technical advice provided by the National Administrator and includes the process for applying for obtaining an official rating based on a NABERS Rating.

Assessment Company) ABN _____ (Name of

agrees to be bound by these terms and conditions of this NABERS Assessment Company Agreement (version 12 – August 2014).

Executed as an Agreement by the Assessment Company in accordance with section 127 of the Corporations Act 2001

Director

Date

Name (printed)

Director/Company Secretary

Date

Name (printed)

OR

Executed as an Agreement by a Sole Trader employing one or more Employed Assessors

Sole Trader (signature)

Date

Name (printed)

Sole Trader Witness (signature)

Name (printed)