
NABERS Commitment Agreement

Version 3.1 – January 2024

Please complete all fields highlighted in yellow in the document and return the completed and signed Commitment Agreement to the National Administrator:
nabers@environment.nsw.gov.au.

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Background

- A. NABERS is a federal government-backed program administered by the National Administrator which aims to:
- (a) stimulate market recognition and demand for buildings with improved greenhouse performance; and
 - (b) allow building owners, managers and tenants to understand the greenhouse impact of their buildings.
- B. This Agreement establishes, amongst other things, the:
- (a) process that the Applicant is required to follow to obtain Design Reviewed Target Rating;
 - (b) basis on which the Applicant may promote its Target Rating and Design Reviewed Target Rating; and
 - (c) basis on which the Applicant may use the Trade Marks.
- C. As part of this Agreement, the following Project milestones must be completed:

Independent Design Review Report	In accordance with clause 6 of the Agreement, the Independent Design Review Report must be submitted before the earlier of: <ul style="list-style-type: none"> • the Construction Certificate Date for the Project; or • the date that is 3 years after the Agreement Date, unless the Agreement Date is after the Construction Certificate Date, in which case the Independent Design Review must be submitted within 4 months after the Agreement Date.
Construction Certificate Date	In accordance with clause 11(a) of the Agreement, the Applicant must notify the National Administrator of the Construction Certificate date.
Occupancy Certificate Date	The Applicant must notify the National Administrator of the Occupancy Certificate date. In accordance with clause 9(a)(i) of the Agreement, this must be received within six years after the Agreement Date.
Data Collection Start Date	In accordance with clause 9(a) of the Agreement, the Applicant must notify the National Administrator of the Data Collection Start Date. The Data Collection Start Date must occur in accordance with Schedule 2.
Certified Performance Rating	In accordance with clause 9(e) of the Agreement, the Applicant must notify the National Administrator when the Project has obtained a Certified Performance Rating.

Project Details

Item #	Project	
1	Project Name	
2	Project address (number, street, suburb and postcode)	
3	Project type	
4	Specification Refer to definitions.	
5	Short description of Project <ul style="list-style-type: none"> • Type of project • Predicted NLA/rated area • Number of floors • Number and type of buildings on site including mixed uses within the buildings 	
6	Space Type <ul style="list-style-type: none"> • Offices • Hotels • Shopping centres • Data centres • Apartment buildings • Residential aged care and retirement living • Warehouses and cold stores. 	
7	Rating Scope	
8	Rating Tool	
9	Target Rating (For Office Base Buildings, the minimum target rating is 5 stars and the minimum for using NCC JV1 is 5.5 stars.)	
Item #	Further Project Details	
10	Independent Design Reviewer (if known)	
11	Intended use/s of the Commitment Agreement	
12	Project status at time of agreement	

APPLICANT DETAILS	
<p>Business name (Applicant) & ABN/ACN</p> <p>Note: If the Applicant is a single entity, please complete the correct field.</p> <p>If the Applicant includes multiple entities, please insert the details of each entity – e.g. if the applicant uses a trust structure with multiple entities, such as multiple trusts or a trustee company and a custodian company, then please insert the details of each entity.</p>	<p>Insert entity details by following the examples below:</p> <p>Option 1 (Company): Applicant's Name (ACN #)]</p> <p>Option 2 (Trustee): [Insert Applicant's Name (ACN #)] (Trustee as the trustee for the [Insert name of Trust] (Trust).</p> <p>Option 3 (Custodian): [Insert Applicant's Name (ACN #)] (Custodian) as custodian [/ as agent for the Trustee] for the [Insert name of Trust] (Trust).</p>
<p>Postal Address</p> <p>Note: If the Applicant includes multiple entities, please nominate a single postal address as contact for the Applicant – and insert their details.</p>	
<p>The Applicant includes a Trustee company and wishes to benefit from Schedule 3</p> <p>(Select "Not Applicable" if the Applicant does not include a Trustee company)</p>	
<p>The Applicant includes a Custodian company and wishes to benefit from Schedule 3</p> <p>(Select "Not Applicable" if the Applicant does not include a Custodian)</p> <p>Note: If the Applicant is a Custodian of a trust, then the Trustee of the Trust must also be a party to this Agreement</p>	
<p>Name of Applicant's contact</p>	

Note: If the Applicant includes multiple entities, please nominate a single contact person as a representative of the Applicant – and insert their details.	
Applicant's email address Note: If the Applicant includes multiple entities, please nominate a single contact person as a representative of the Applicant – and insert their details.	
Applicant's position Note: If the Applicant includes multiple entities, please nominate a single contact person as a representative of the Applicant – and insert their details.	

REPRESENTATIVE DETAILS (only to be completed if the Applicant wishes to appoint an external representative to act on its behalf – see clause 24.6)	
Business name of Representative	
Name of Representative's contact	
Representative's position	
Representative's role in project	
Representative's email address	

PAYMENT DETAILS (please complete the details of the company to be paying the invoice for this Agreement – see clause 2)	
Trading Name	
ABN/ACN	
Billing postal address	
Billing email address	

NATIONAL ADMINISTRATOR DETAILS	
Contact	Att: NABERS Commitment Agreement Administrator
Postal address	Request via email postal address details if required
Contact email address	nabers@environment.nsw.gov.au

For NABERS National Administrator use only

<i>Agreement number</i>	<i>For National Administrator use only</i>
<i>Rules version number</i>	<i>For National Administrator use only</i>
<i>Handbook for estimating NABERS ratings version number</i>	<i>For National Administrator use only</i>
<i>Rating Tool</i>	<i>For National Administrator use only</i>
<i>Agreement Date</i>	<i>For National Administrator use only</i>
<i>Validity of NGA Emissions Factors used in relevant rating algorithm</i>	<i>Until 2025</i>

Background

Operative Provisions

1. Interpretation

1.1 Definitions

- (a) Meanings apply to capitalised terms used in this Agreement as specified in this provision, unless the context otherwise requires.
- (b) The words outlined on the left of the below table have the meaning prescribed to them on the right of the below table:

Accredited Assessor	An Independent person authorised by the National Administrator and listed on the Website, who determines the Certified Performance Rating in accordance with: <ul style="list-style-type: none">(a) the Rules; and(b) applicable process determined by the National Administrator, as updated from time to time.
Agreement	This NABERS Commitment Agreement, including all schedules and any policies, guidelines and other documents referred or attached to this NABERS Commitment Agreement.
Agreement Date	The date of signature by the National Administrator of this Agreement.
Agreement Fee	The relevant fee(s) required for payment by the Applicant under this Agreement, as specified by the National Administrator on the Website as at the Agreement Date.
Applicant	The entity or entities identified in the Project Details. Each of the entities listed as the Applicant will be jointly and severally liable under this Agreement. If the Applicant involves a Custodian for a trust, then the Applicant will be both the Custodian and the relevant Trustee of Trust – as defined in Project Details.
Applicants Personnel	The employees, officers, agents, professional advisors, subcontractors of the Applicant.
Authority	Any governmental, semi-government, statutory, public, local government or other authority or body having jurisdiction under or in connection with this Agreement.
Brand Guidelines	The NABERS brand guidelines for customers as listed on the Website, which may be amended or updated from time to time.
Business Day	A day which is not Saturday, Sunday or a public holiday in Sydney,

	New South Wales.
Certified Performance Rating	A rating of zero to six stars that may be awarded by the National Administrator for the Project, having assessed the actual operational performance of a Space Type in accordance with the Rules following the collection of data starting from the Data Collection Start Date.
Claims	Any claims, suits, liabilities, losses, damages, fines, costs, settlement payments or expenses (including legal costs on a solicitor and own client basis).
Commitment Agreement	Agreements entered into by property owners and/or developers to design and construct buildings in a manner that results in positive greenhouse performance. For the avoidance of doubt, this Agreement is classified as a Commitment Agreement.
Confidential Information	<p>Any trade secrets, financial information, information relating to the operations, affairs or business and any other scientifically valuable information of whatever description and in whatever form (whether written or oral, visible or invisible) of a party but does not include information that is:</p> <ul style="list-style-type: none"> (a) in the public domain; or (b) independently known or developed by the party receiving the information other than as a result of a breach of this Agreement or any other obligation of confidentiality owed by or to any other person.
Construction Certificate	A document issued by the relevant Authority, certifying and consenting to the building work proceeding in accordance with the approved plans for construction for the building.
Construction Certificate Date	<p>If the Project is a:</p> <ul style="list-style-type: none"> (a) New Project, then the date on which the Project in its entirety obtains a Construction Certificate; or (b) Existing Project, then the date on which the Project building or refurbishment works commence.
Construction Obligations	<p>The Applicant must construct the Project in accordance with all:</p> <ul style="list-style-type: none"> (a) design and construction specifications; (b) nominated materials; and (c) other information; <p>confirmed by the Applicant, or otherwise provided, to the Reviewer at the time the Reviewer created the Independent Design Report.</p>
Data Collection Start Date	The relevant date specified in Schedule 2, being the on which relevant data starts being collected for the purposes of obtaining a Certified Performance Rating for the Project.
Design Reviewed	As estimated and determined at the Agreement Date, a rating of four

Target Rating	<p>to six stars, reflecting the estimated Certified Performance Rating based on, for a:</p> <ul style="list-style-type: none"> (a) New Project, the forecasted operational performance of the Space Type for the Project; or (b) Existing Project, the forecasted operational performance of the Space Type once the project or refurbishment works are complete.
Design Reviewed Target Rating Certificate	A certificate awarded to the Applicant by the National Administrator to confirm the Design Reviewed Target Rating assessed and/or confirmed by the National Administrator for the Project.
Design Reviewed Target Rating Licence Period	<p>Is the period commencing on the date on which the Design Reviewed Target Rating is awarded by the National Administrator and expires 3 years after the date on which the Design Reviewed Target Rating unless this Agreement is earlier terminated.</p> <p>Note: the Design Reviewed Target Rating Licence Period may be extended in accordance with clauses 7(c) and 7(d) and if extended, the definition is automatically updated in accordance with those provisions.</p>
Design Reviewed Target Rating Rights	The applicable rights set out in Schedule 1, which may be exercised by the Applicant throughout the Design Reviewed Target Rating Licence Period from the date the Applicant obtains the Design Reviewed Target Rating Certificate.
Estimate Report	<p>The report created by the Estimator which sets out a realistic estimate of the operational performance of the Project determined:</p> <ul style="list-style-type: none"> (a) in accordance with the Handbook; and (b) without reference, calculation or consideration to GreenPower or other offsite renewable energy.
Estimator	The person who undertakes the Estimate Report, appointed in accordance with clause 5(a).
Existing Projects	<p>Any project or refurbishment which:</p> <ul style="list-style-type: none"> (a) does not require a development consent from any relevant Authority; and (b) is not a New Project.
Greenpower	The national GreenPower™ Accreditation Program administered by the NSW Office of Energy and Climate Change aiming to decrease greenhouse gas emissions associated with electricity generation and to facilitate the installation of new renewable energy generators across Australia.
GST	Any tax levied under the GST Law.
GST Law	<i>A New Tax System (Goods and Services Tax) Act 1999 (Cth).</i>

Handbook	The <i>Handbook for estimating NABERS Ratings</i> , which is available for download from the Website (specifically at https://www.nabers.gov.au/publications/commitment-agreement-documentation as at the Agreement Date) and may be updated from time to time.
Independent	A person, either in their individual capacity or working for a company, that has not had any direct or indirect: <ul style="list-style-type: none"> (a) involvement with the design, construction or commissioning of the Project; (b) interest (pecuniary or otherwise) in any part of the Project; or (c) involvement in any capacity with the Applicant regarding the Project.
Independent Design Review	An independent design assessment undertaken by the Reviewer of the Project prior to the Construction Certificate Date determined against applicable criteria in the Handbook, in particular (but without limitation) section 5 of the Handbook (which may be updated from time to time).
Independent Design Review Report	The report prepared in respect of the Independent Design Review by the Reviewer.
Insolvency Event	Means the occurrence of any of the following events: <ul style="list-style-type: none"> (a) an administrator is appointed; (b) a liquidator is appointed due to the Applicant entering into Liquidation; (c) any legal action, not being in the reasonable estimation of the National Administrator a disputed action, is commenced, a judicial order is made, or resolution is passed for the liquidation of the Applicant; (d) the Applicant ceases business, or a proposal is put for cessation of the Applicant's business; or (e) the Applicant, if a natural person, becomes the subject of a sequestration order or entering into a composition, deed of assignment or deed of arrangement pursuant to Part X of the <i>Bankruptcy Act 1966</i> (Cth).
Intellectual Property	Means all intellectual property rights, including: <ul style="list-style-type: none"> (a) copyright, patents, trademarks (including goodwill in those marks), designs, trade secrets, know how, rights in circuit layouts and domain names; (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and (c) all rights of a similar nature to any of the rights in paragraphs (a)

	and (b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.
Law	Any requirement of any statute, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise.
Liquidation	Means a winding up or liquidation whether voluntary or involuntary), provisional liquidation, dissolution, deregistration, or steps are taken (including the calling of meetings or the filing of applications), orders are made, or resolutions are passed to give effect to any of the above.
Materials	Any or all of the: <ul style="list-style-type: none"> (a) Target Rating; (b) Design Reviewed Target Rating; (c) Trade Marks; (d) Design Reviewed Target Rating Certificate; and (e) Marketing Materials, and includes any updates, amendments, revisions or otherwise to the above listed.
Marketing Materials	All marketing, promotional and advertising materials relating to the Project created by or on behalf of the Applicant and the Applicant's Personnel, including website and social media posts.
NABERS	The National Australian Built Environment Rating System.
NABERS Independent Design Review Panel	The panel of Reviewers who are appointed by the National Administrator to undertake the Independent Design Review and prepare the Independent Design Review Reports.
NABERS IP	Is the Intellectual Property that NABERS or the National Administrator makes available for the Project or purpose of this Agreement, whether upon commencement of this Agreement or during the term of this Agreement, which includes, without limitation: <ul style="list-style-type: none"> (a) The Rating Tool; (b) Handbook; (c) the Trade Marks; and (d) any other Intellectual Property owned by or otherwise licensed to the National Administrator in relation to the NABERS program.
National Administrator	The Crown in the right of the State of New South Wales acting through The Department of Climate Change, Energy, The Environment and Water represented by the Office of Energy and Climate Change, as the entity responsible for administering, managing and developing the NABERS national government program.

National Greenhouse Accounts Factors	The applicable factors as at the relevant time of use under this Agreement, used to estimate greenhouse gas emissions, as updated from time to time on the website of the Australian Department of Climate Change, Energy, the Environment and Water. As at the Agreement Date, the National Greenhouse Account Factors may be found at https://www.dcceew.gov.au/climate-change/publications/national-greenhouse-accounts-factors
New Projects	Any project and/or refurbishment which requires the attainment of, and compliance with, a development consent from the relevant Authority.
Occupancy Certificate	<p>A document issued with respect to the Project by the relevant Authority certifying that the that the building(s):</p> <ul style="list-style-type: none"> (a) work has been completed for the Project: <ul style="list-style-type: none"> (i) in accordance with the approved plans and development consent; and (ii) all applicable Laws; and (b) is suitable for occupation.
Occupancy Certificate Date	<p>In relation to:</p> <ul style="list-style-type: none"> (a) New Projects: the date on which the Project in its entirety obtains an Occupancy Certificate; or (b) Existing Projects: the date on which all building work is complete and the premises is able to be occupied.
Personal Information	Has the same meaning as in the <i>Privacy and Personal Information Protection Act 1998</i> (NSW).
Personnel	Any employee, officer or agent of a party.
Project	The project as described in the Project Details.
Project Specification	Either a New Project or Existing Project and for this Project, is as Is I specified in Item 4 of the Project Details.
Rating Scope	<p>The rating scope selected in Item 7 of the Project Details, which must align to the Space Type as follows:</p> <ul style="list-style-type: none"> (a) For offices: base building, whole building or tenancy and associated rating coverage according to the Rules. (b) For data centres: whole centre, infrastructure or IT equipment and associated rating coverage according to the Rules. (c) For apartment buildings, shopping centres or hotels: rating coverage according to the relevant Rules. (d) For residential aged care and retirement living: rating coverage according to the relevant Rules. (e) For warehouses and cold stores: rating coverage according to

	the relevant Rules.
Rating Tool	<p>The NABERS rating tools that may be used for the purposes of a Target Rating, Design Reviewed Target Rating or Certified Performance Rating, which are for, at the Agreement Date:</p> <ul style="list-style-type: none"> (a) office energy; (b) shopping centre energy; (c) hotel energy; (d) data centre energy; (e) apartment building energy; or (f) residential aged care and/or retirement living energy (g) warehouses and cold stores.
Re-Assessment Request	The request in the form annexed at Schedule 6 to be submitted by the Applicant to the National Administrator in accordance with clause 9(i).
Remedy Notice	A breach and remedy notice provided under clause 18.3.
Representative	The entity (if any) nominated by the Applicant as its representative, specified in the Project Details.
Request	The request in the form annexed at Schedule 4 to be submitted by the Applicant to the National Administrator in accordance with clause 9(f).
Reviewer	The person who is selected from the NABERS Independent Design Review Panel to undertake the Independent Design Review and create the Independent Design Review Report.
Rules	The NABERS rules applicable to the relevant Space Type as published on the Website as at the Agreement Date.
Space Type	<p>The category of building, or part of a building, that is:</p> <ul style="list-style-type: none"> (a) specified in Item 6 of the Project Details; and (b) able to have its operational energy performance assessed through a NABERS rating system.
Status	The official status of this Agreement from time to time as determined by the National Administrator from time to time. The possible status identifiers are set out in Schedule 1.
Target Rating	<p>The initial rating of four to six stars specified in the Project Details determined at the Agreement Date:</p> <ul style="list-style-type: none"> (a) estimating the likely Design Reviewed Target Rating for the Project; and (b) must not include any reference, calculation or consideration to GreenPower or other offsite renewable energy,

Target Rating Licence Period	The period during which the Applicant may exercise the Target Rating Rights as set out in Schedule 1.
Target Rating Rights	<p>The applicable rights set out in Schedule 1, which may be exercised by the Applicant throughout the Target Rating Licence Period, subject always to:</p> <ul style="list-style-type: none"> (a) the full payment of any Agreement Fee invoiced by the National Administrator; and (b) compliance with all reasonable directions of the National Administrator.
Termination Notice	Means a written notice issued by the National Administrator to the Applicant terminating this Agreement in accordance with clause 18.1.
Trade Marks	The trademark(s) associated with NABERS that are owned by the National Administrator whether registered or unregistered, including star variants of NABERS Design Reviewed Target Rating logos and those marks registered (including trademarks 1106420 and 1959846) or pending registration at the Agreement Date.
Website	The NABERS website currently located at www.nabers.gov.au .

1.2 Interpretation of rules

The following rules of interpretation apply to this Agreement:

- (a) **(headings)**: headings and subheadings are for convenience only and do not affect interpretation, except for specified cross-references;
- (b) **(plurality)**: words denoting the singular number include the plural, and the converse also applies;
- (c) **(gender)**: words denoting any gender include all genders;
- (d) **(parties)**: any reference to a party to any agreement or document includes its:
 - (i) successors;
 - (ii) permitted assigns; and
 - (iii) substitutes by way of novation;
- (e) **(expressions)** an expression importing:
 - (i) a person, includes any company, partnership, joint venture, association, trust, corporation or other body corporate and any authority as well as an individual; and
 - (ii) an entity, includes any person, company, partnership, joint venture, association, trust, corporation or other body corporate and any authority as

well as an individual;

- (f) **(amendments)**: any reference to any agreement or document includes that agreement or document as amended at any time;
- (g) **(provisions)**: any reference to a provision is a reference to a clause of, or schedule or annexure to, this Agreement including each subclause, paragraph and subparagraph of that provision;
- (h) **(references)**: any reference to:
 - (i) a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this Agreement;
 - (ii) any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
 - (iii) a reference to \$ is to Australian currency unless denominated otherwise; and
 - (iv) a document includes all amendments or supplements to, or replacements, assignments, transfers or novations of, that document;
- (i) **(time)**:
 - (i) a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
 - (ii) if an act prescribed under this Agreement to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day; and
 - (iii) a reference to time is a reference to Sydney time; and
- (j) **(specifics)**: the use of the words “including” or “for example” or any similar expressions or derivatives are without limitation.

2. Payment

2.1 Payment Terms

- (a) The Applicant must pay the Agreement Fee to the National Administrator within 30 days after the receipt of an invoice from the National Administrator.
- (b) The National Administrator may issue the invoice to the Applicant for the Agreement Fee at any time on and from the date that this Agreement is signed by the Applicant.
- (c) The Applicant is solely responsible for the performance of the Applicant's obligations under this Agreement, including any monies payable to third parties

(for example without limitation, all subcontractors, the Estimator, the Reviewer and the Accredited Assessor).

2.2 No refund of agreement fee

- (a) The Applicant acknowledges that the Agreement Fee is not refundable under any circumstance, and the Applicant will not be entitled to recover any or all of the Agreement Fee that has been paid to the National Administrator.

2.3 GST

- (a) Words used in this clause that are not defined in clause 1.1 have the meaning given in the GST Law.
- (b) Unless otherwise specified, all amounts payable under this deed are exclusive of GST.
- (c) If a supply made under this deed is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to any other consideration, pay to the party making the taxable supply (**Supplier**) the amount of GST in respect of the supply.
- (d) The Recipient will only be required to pay an amount of GST to the Supplier if and when the Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply.
- (e) If there is an adjustment to a taxable supply made under this deed, then the Supplier must provide an adjustment note to the Recipient.
- (f) The amount of a party's entitlement under this deed to recovery or compensation for any of its costs, expenses or liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses or liabilities.

3. Term and purpose

- (a) Subject to clause 24.1, this Agreement commences on the Agreement Date and expires on the date on which a Certified Performance Rating is awarded to the Applicant for the Project, unless terminated earlier in accordance with its terms.

4. Target rating

- (a) Subject always to the full payment of the Agreement Fee by the Applicant, the Applicant may exercise the Target Rating Rules throughout the Target Rating Licence Period.
- (b) The Target Rating for the Project may be changed during the Target Rating Licence Period only by prior written agreement between the parties.
- (c) The Applicant must:

- (i) have demonstratable reasonable grounds for nominating the Target Rating specified on the Project Details;
- (ii) not include any reference, calculation or consideration to GreenPower or other offsite renewable energy when determining the Target Rating; and
- (iii) nominate the Target Rating having regard to:
 - (A) the likelihood that the Project will achieve the same (or higher) Design Reviewed Target Rating;
 - (B) the applicable requirements set out in the Handbook; and
 - (C) any other considerations notified by the National Administrator.

5. Estimate report

- (a) As soon as practical and in all cases within the following timeframes:
 - (i) if the Agreement Date is before the Construction Certificate Date, then within 8 months after the Agreement Date (unless a different timeframe is otherwise approved in writing by the National Administrator); or
 - (ii) if the Agreement Date is after the Construction Certificate Date, then within 6 weeks after the Agreement Date,
 the Applicant must:
 - (iii) appoint an Estimator to prepare the Estimate Report;
 - (iv) provide notice to the National Administrator that an Estimator has been appointed which includes all the requested details of the Estimator; and
 - (v) ensure the Estimator is suitably qualified and experienced, having regard to the recommended skills specified in the Handbook.
- (b) If the Agreement Date is after the Construction Certificate Date, then the Applicant must ensure that the Estimate Report is provided within 3 months after the Agreement Date.
- (c) Promptly after the Estimate Report has been provided by the Estimator, the Applicant must:
 - (i) notify the National Administrator of the outcome of the Estimate Report, in particular (without limitation) whether there is any indication (or otherwise) that Target Rating nominated by the Applicant is, on demonstratable and reasonable grounds, either:

- (A) accurate, appropriate and justifiable; or
 - (B) inaccurate, inappropriate or unjustifiable;
- (ii) provide an original copy of the Estimate Report to the National Administrator; and
- (iii) provide any further information requested by the National Administrator with respect to the Estimate Report and the information supporting or otherwise informing the Estimate Report.
- (d) If notice is provided under clause 5(c)(i) above, then the National Administrator (acting reasonably) on notice to the Applicant may replace the Target Rating with a revised Target Rating that accurately reflects the Estimate Report.
- (e) The Applicant acknowledges that an Estimate Report provided to the National Administrator is not deemed as verified by National Administrator prior to the approval of the Independent Design Review Report.

6. Independent Design Review

- (a) After the Applicant has obtained the Estimate Report and provided notice to the National Administrator in accordance with clause 5 above, the Applicant must appoint a Reviewer (if not done previously with respect to the Project) to conduct the Independent Design Review and prepare an Independent Design Review Report for the Project.
- (b) Subject to clause 6(c), the Applicant must appoint a Reviewer as soon as practical but, in all cases, within 9 months after the Agreement Date (unless a different timeframe is otherwise approved in writing by the National Administrator). The Applicant must provide a copy of the Independent Design Review Report to the National Administrator promptly after it is finalised by the Reviewer and in any event before the earlier of:
 - (i) the Construction Certificate Date; or
 - (ii) the date that is 3 years from the Agreement Date.
- (c) Where the Applicant executes the Agreement for the Project after the Construction Certificate Date:
 - (i) the Applicant must appoint a Reviewer within 2 months after the Agreement Date; and
 - (ii) the Applicant must ensure that the Reviewer produces an Independent Design Review Report within four (4) months after the Agreement Date. The Applicant must then comply with clauses 8(a), 8(d) and 8(e) and provide a copy of the Independent Design Review Report to the National Administrator

promptly after it is finalised by the Reviewer; and

- (iii) upon providing the Independent Design Review Report to the National Administrator, the Applicant must also comply with and submit the form in Schedule 7 to the National Administrator.
 - (d) The Applicant must ensure that the Reviewer appointed under clause 6(a) is:
 - (i) independent to the Project; and
 - (ii) knowledgeable and experienced in the building energy simulation software used by the Estimator for the Estimate of the Project; and
 - (iii) a member appointed on the NABERS Independent Design Review Panel Members.
 - (e) The Applicant must provide the Reviewer with:
 - (i) all relevant information and documentation specified in the Handbook;
 - (ii) the Estimate Report;
 - (iii) all Project design documentation; and
 - (iv) all other information and documentation requested by the Reviewer.
 - (f) The Applicant agrees to use its best endeavours to ensure that the Reviewer produces an Independent Design Review Report before the Construction Certificate Date.
 - (g) Without limitation to the right for the National Administrator's right to terminate this Agreement under clause 6(h), if the Applicant believes or has reason to believe the Independent Design Review will not be (or is unlikely to be) obtained prior to:
 - (i) the Construction Certificate Date for applications under clause 6(b); or
 - (ii) 4 months after the Agreement Date under clause 6(c),(either being the **Independent Review Longstop Date**), then the Applicant must promptly notify the National Administrator providing:
 - (iii) reasons; and
 - (iv) any other substantiating documents it considers relevant.
- The Applicant and the National Administrator will then consult on the next steps under this clause and the Applicant must follow the National Administrator's directions, including by providing any further information and documentation requested by the National Administrator.
- (h) If the Independent Design Review is not obtained by the relevant Independent Review Longstop Date, then the National Administrator may terminate this

Agreement at any time after the Independent Design Review Longstop Date under clause 18.1(b)(ix).

7. Design Reviewed Target Rating

- (a) After receiving the Independent Design Review Report and provided that the Applicant has complied with all of the relevant obligations under this Agreement, the National Administrator may award the Applicant a Design Reviewed Target Rating.
- (b) The Design Reviewed Target Rating is valid for Design Reviewed Target Rating Licence Period.
- (c) If the Applicant wishes to extend the Design Reviewed Target Rating Licence Period for a further 2 years, then the Applicant must submit a request in the form of Schedule 4 to the National Administrator at least 6 months prior to the expiry of the Design Reviewed Target Rating Licence Period (**Extended Term**). If the National Administrator approves the application for the Extended Term (at its discretion), then on and from the date of that approval references to the Design Reviewed Target Rating Licence Period in this Agreement, will be deemed updated to reflect the expiry date of the Extended Term.
- (d) If the Applicant wishes to further extend the Extended Term (**Further Extended Term**), the Applicant must submit a request to the National Administrator outlining the period of the proposed Further Extended Term and the reasons for the request. If the National Administrator approves the request for a Further Extended Term (at its discretion), then on and from the date of that approval references to the Design Reviewed Target Rating Licence Period in this Agreement, will be deemed updated to reflect the expiry date of the Further Extended Term.
- (e) The National Administrator reserves the right in its discretion, acting reasonably, to:
 - (i) award a Design Reviewed Target Rating by issuing a Design Reviewed Target Rating Certificate;
 - (ii) review, request changes and/or reject an Independent Design Review Report; or
 - (iii) decide not to award a Design Reviewed Target Rating.
- (f) In making its determination under clause 7(e), the National Administrator will consider the results and information contained in the Independent Design Review Report.
- (g) If the National Administrator queries or requests changes to the Independent

Design Review Report, the Applicant must engage with Reviewer to:

- (i) rectify the queries;
 - (ii) complete any requested changes with respect to any technical or risk factors; and
 - (iii) re-submit the revised report to the National Administrator.
- (h) The Applicant may exercise its Design Reviewed Target Rating Rights on and from the date of the Design Review Target Certificate, if awarded, and throughout the Design Reviewed Target Rating Licence Period.
- (i) If a Design Reviewed Target Rating is not awarded by the National Administrator, the National Administrator may terminate this Agreement under clause 18.1(b)(vii) by giving the Applicant 7 days' written notice.

8. Design Implementation and Changes

- (a) If a Design Reviewed Target Rating is awarded to the Project by the National Administrator, then the Applicant must use its reasonable endeavours comply with its Construction Obligations.
- (b) In fulfilling its Construction Obligations, without limitation, the Applicant must use reasonable endeavours to:
- (i) minimise significant changes to the design and construction specifications;
 - (ii) minimise significant changes to the materials used;
 - (iii) ensure that all consultants, employees and subcontractors engaged to work on the Project follow and implement the design and construction specifications and use the specified materials;
 - (iv) minimise any changes which will result in the Design Review Target Rating not being achieved and provide written notice to the National Administrator of any such changes if they arise;
 - (v) provide notice to the National Administrator of any changes that will result in the information provided to the Reviewer being inaccurate or otherwise incorrect and would result in the Design Review Target Rating not being achieved; and
 - (vi) have regard to the contents of the Independent Design Review Report during the construction phase for the Project.
- (c) If at any time during the Design Reviewed Target Rating Licence Period there are changes to the Project which may objectively result in the Certified Performance Rating not at least equalling the Design Reviewed Target Rating, the Applicant

must, at the Applicants cost:

- (i) arrange for an updated Estimate Report;
 - (ii) provide the updated Estimate Report to the Reviewer and the National Administrator;
 - (iii) if required by the National Administrator, arrange for the Reviewer to provide an updated Independent Design Review Report; and
 - (iv) provide the National Administrator with a copy of the updated Independent Design Review Report.
- (d) Upon receipt of an updated Estimate Report and/or Independent Design Review Report, the Applicant acknowledges that National Administrator may:
- (i) replace the Design Reviewed Target Rating with a revised Design Reviewed Target Rating by giving the Applicant notice in writing, in which case the National Administrator will also issue the Applicant with a revised Design Reviewed Target Rating Certificate; or
 - (ii) consult with the Applicant and raise concerns relating to the Estimate Report and/or Independent Design Report and agree with the Applicant a reasonable timeframe for the Applicant to address those concerns.
- (e) Following consultation under clause 8(d)(ii) above, if the Applicant has not resolved the concerns of the National Administrator in the timeframe agreed by the National Administrator, then the National Administrator may either, at its discretion:
- (i) agree to extend the timeframe; or
 - (ii) terminate this Agreement under clause 18.1(b)(ix).

9. Certified Performance Ratings

- (a) The Applicant must promptly notify the National Administrator of the:
 - (i) Occupancy Certificate Date once achieved, which must be within 6 years of the Agreement Date; and
 - (ii) Data Collection Start Date for the Project as determined in accordance with Schedule 2.
- (b) The Applicant must begin data collection on the Data Collection Start Date for the Certified Performance Rating for the Project identified for the applicable Space Type and Rating Tool in Schedule 2.
- (c) The Applicant must:

- (i) arrange and pay for an Accredited Assessor to conduct, lodge and obtain a Certified Performance Rating for the Project;
- (ii) inform the Accredited Assessor that this Agreement is in place so that 'Commitment Agreement' option is selected when the Accredited Assessor lodges the Certified Performance Rating; and
- (iii) comply with all applicable Rules relating to data collection for the:
 - (A) Certified Performance Rating generally; and
 - (B) Certified Performance Rating application process.
- (d) The parties acknowledge that the:
 - (i) process of awarding a Certified Performance Rating; and
 - (ii) the rights that the Applicant enjoys if a Certified Performance Rating is awarded,
 - (iii) are governed by separate terms and conditions.
- (e) The Applicant must notify the National Administrator when the Certified Performance Rating has been obtained. For the avoidance of doubt, no Target Rating or Design Reviewed Target Rating Rights may be exercised after the first Certified Performance Rating has been awarded for the Project.
- (f) If the Certified Performance Rating awarded for the Project results in a star rating result that is lower than the Design Reviewed Target Rating, the Applicant may submit a Request in the form of Schedule 5 that the National Administrator delays publication of the final Status for a period of up to 16 months from the date that the request has been approved. If the Request does alter or vary the Design Reviewed Target Rating Licence Period for the Project, the terms of this Agreement continue to apply for any agreed period under this clause.
- (g) The Request must be submitted to the National Administrator for consideration on or before the date that is 10 Business Days after the first Certified Performance Rating has been awarded to the Project.
- (h) If the Request is approved by the National Administrator:
 - (i) the Project may maintain the Status of the Commitment Agreement for the Project as *"In Progress (Design Reviewed Target Rating)"* for up to a maximum of 16 months from the date the first Certified Performance Rating is awarded to the Applicant;
 - (ii) the Applicant must arrange and pay for an Independent Accredited Assessor to conduct, lodge and obtain a second Certified Performance Rating for the Project;

- (iii) the second Certified Performance Rating Data Collection Start Date must be the date that is the day following the last day of the applicable period for the first Certified Performance Rating awarded for the Project;
 - (iv) the results of the second Certified Performance Rating will determine the final Status of the Agreement on the Website, regardless of the results of any future Certified Performance Ratings; and
 - (v) the Applicant must notify the National Administrator in writing when the second Certified Performance Rating has been obtained.
- (i) If the Certified Performance Rating awarded for the Project results in a star rating result that is lower than the Design Reviewed Target Rating due to updated changes to the National Greenhouse Accounts Factors, the Applicant may submit a Re-Assessment Request in the form of Schedule 6 alongside any supporting evidence for the National Administrator's consideration.
- (j) The Applicant's Re-Assessment Request:
 - (i) must be submitted to the National Administrator for consideration before the date that is 28 months after the Project's Occupancy Certificate Date; and
 - (ii) will be assessed by the National Administrator.
 - (iii) The National Administrator will respond to the Applicant as soon as possible but in any event no later than 15 Business Days' on and from the date that the Applicant submitted the Re-Assessment Request.
- (k) If the Applicant's Re-Assessment Request is:
 - (i) approved by the National Administrator, the Status of the Commitment Agreement may be listed by the National Administrator as '*Achieved*' on the Website; and
 - (ii) not approved by the National Administrator, the reasons why it was not approved will be provided to the Applicant within 15 Business Days' on and from notice of the determination by the National Administrator.
- (l) Subject to the completion of any requirements under clauses 9(e) to 9(k), on and from the date that the Certified Performance Rating is awarded:
 - (i) the National Administrator may update the final Status of the Agreement on the Website; and
 - (ii) the Certified Performance Rating will replace the Design Reviewed Target Rating.

10. Records, Access & Disclosure of Information

- (a) The Applicant must maintain and keep in good condition records, books of account and documents relating to the Project that are relevant to this Agreement (**Records**) for a minimum of 7 years after expiry or termination of this Agreement, including:
 - (i) project architectural drawings and specifications (design and as-built);
 - (ii) project services drawings and specifications (design and as-built);
 - (iii) the Project's progress against key milestones; and
 - (iv) any other information relevant to this Agreement, the Target Rating and the Design Reviewed Target Rating.
- (b) The National Administrator may request copies of the Records. The Applicant must promptly provide the requested Records to the National Administrator.
- (c) If requested by the National Administrator, the Applicant must:
 - (i) authorise the National Administrator and any Australian State Government or Australian Commonwealth Government department or agency that has provided moneys to the National Administrator for the purposes of the Project, to undertake audits, to examine and inspect, at reasonable times and on reasonable Notice, any records held by the Applicant, and allow any such Records to be copied; and
 - (ii) provide all reasonable assistance in order for the any Australian State Government or Australian Commonwealth Government department or agency to properly carry out the inspections and audits referred to in this clause.
- (d) If the National Administrator determines, acting reasonably, that the Target Rating or Design Reviewed Target Rating awarded to the Project is inaccurate based on the information contained in the Records or otherwise, the Applicant acknowledges that National Administrator may:
 - (i) require the Applicant to obtain a further Independent Design Review Report (**Further Independent Design Review Report**) in accordance with the process under clause 6 as if the Further Independent Design Review Report was the original Independent Design Review Report;
 - (ii) replace the Target Rating or Design Reviewed Target Rating (as the case may be) with a revised Target Rating or Design Reviewed Target Rating:

- (A) in accordance with results of the Further Independent Design Review by giving the Applicant notice in writing; or
 - (B) otherwise at the National Administrator's discretion on written notice, subject to the National Administrator consulting with the Applicant prior to the revision; or
- (iii) subject to clause 18.3(b), if the National Administrator reasonably determines that due to the inaccuracy the Project no longer qualifies for a Target Rating or Design Reviewed Target Rating, then subject to first undertaking remedy steps in accordance with clause 18.3(b), terminate this Agreement under clause 18.1(b)(xi).
- (e) The Applicant acknowledges that under the *Government Information (Public Access) Act 2009* (NSW), the National Administrator may be required to publicly disclose information about this Agreement. None of the disclosure obligations require the disclosure of:
 - (i) the commercial-in-confidence provisions of a contract;
 - (ii) any matter that could reasonably be expected to affect public safety or security; or
 - (iii) information which would be exempt from disclosure if it were the subject of an application under the *Government Information (Public Access) Act 2009*.
- (f) The Applicant may nominate any items the Applicant considers are confidential and why, to assist the National Administrator in determining what items to disclose.

11. Applicant's Rights and Obligations

- (a) The Applicant must notify the National Administrator of the Construction Certificate Date for the Project promptly after it is issued by the relevant consent Authority.
- (b) The Applicant must:
 - (i) exercise its Target Rating Rights and Design Reviewed Target Rating Rights pursuant to the terms of this Agreement;
 - (ii) adhere to and comply with the Brand Guidelines at all times; and
 - (iii) only use the Trade Marks:
 - (A) as permitted by Schedule 1; and
 - (B) only for the purpose of promoting and advertising that the Project has obtained the relevant Target Rating or Design Reviewed Target Rating (as the case may be).
- (c) The Applicant acknowledges and agrees that the Applicant's rights to use the

Trade Marks as specified in Schedule 1 are not:

- (i) exclusive to the Applicant;
 - (ii) assignable by the Applicant, unless this Agreement is novated in accordance with clause 17; and
 - (iii) subject to clause 11(f) below, sublicensable.
- (d) The Applicant's use of any of the Materials must not:
- (i) imply or infer that the Applicant or the Project:
 - (A) is officially associated with NABERS;
 - (B) in any way administers NABERS;
 - (C) owns the Trade Marks;
 - (D) owns the NABERS IP; or
 - (E) is otherwise endorsed by the National Administrator or NABERS beyond the endorsement provided for under this Agreement by way of the Target Rating or Design Reviewed Target Rating;
 - (ii) be false, unlawful, confusing, misleading or deceptive (or be framed in such a way that might be false, confusing, misleading or deceptive) including by leading any third party to believe or suspect that the:
 - (A) Applicant or the Project has been awarded a Certified Performance Rating;
 - (B) Project is guaranteed to be energy efficient once completed; and/or
 - (C) Design Reviewed Target Rating or any other NABERS award or accreditation given to the Project has been achieved in operation.
- (e) The Applicant must not:
- (i) use any variation or representation of the Trade Marks, other than the Trade Marks provided on the Design Reviewed Target Rating Certificate and logo relating to the Project;
 - (ii) use the Trade Marks or any of them in any way that may bring the National Administrator or NABERS into disrepute;
 - (iii) alter the Trade Mark's position, size and relationship with its constituent elements, without the National Administrator's prior written approval;
 - (iv) permit the Trade Marks to be crowded by other visual material including, but not limited to, borders and other typographic or graphic devices; or
 - (v) use the Trade Marks in any context or for any purpose:

- (A) if it has not obtained a Target Rating or a Design Reviewed Target Rating; or
 - (B) once the Target Rating Licence Period or the Design Reviewed Target Rating Licence Period (as applicable) expires unless authorised to do so pursuant to the Certified Performance Rating terms and conditions.
- (f) The Applicant:
 - (i) may sublicense the Applicant's licensed right to use the Trade Marks under this Agreement to third parties solely for the purpose of preparing or publishing advertising and promotional materials for the Project, provided that such use is consistent with the terms of this Agreement (**Sublicensed Third Party**);
 - (ii) other than in accordance with clause 11(f)(i), must not sublicense its licensed rights to use the Trade Marks under this Agreement (in any circumstances) to any of its subcontractors, agents, suppliers, consultants or any other party involved in the Project;
 - (iii) remains responsible for any use of the Trade Marks by the Sublicensed Third Party; and
 - (iv) indemnifies and keeps indemnified the National Administrator and the State of New South Wales against any claims or liabilities arising out of or in connection with the use of the Trade Marks by the Sublicensed Third Party.

12. Marketing Materials

- (a) Without limiting any other provisions of this Agreement, the Applicant must ensure that the Marketing Materials do not infer, represent or imply (expressly or otherwise) that by virtue of having obtained a Target Rating, Design Reviewed Target Rating and/or Design Reviewed Target Rating Certificates the Project is or will:
 - (i) be structurally sound or safe;
 - (ii) be constructed in accordance with applicable Laws, regulations or codes; or
 - (iii) once constructed, achieve a relative or specified level of carbon or energy efficiency, performance, or use of renewable, recycled or recyclable resources.
- (b) The Applicant agrees that if a Design Reviewed Target Rating is awarded, the Applicant must not promote or use the Design Reviewed Target Rating for the Project in any way which gives or might give the impression that the Design

Reviewed Target Rating applies to any other building, Space Type or part of the building apart from the Project.

13. Ceasing Use of Trade Marks, Target Ratings and Design Reviewed Target Ratings

- (a) If:
 - (i) the National Administrator revises a Target Rating or a Design Reviewed Target Rating;
 - (ii) the Target Rating Licence Period or Design Reviewed Target Rating Licence Period (as the case may be) expires; or
 - (iii) this Agreement is terminated or expires,
- (b) the Applicant must immediately cease use of and take all necessary steps to withdraw all Marketing Materials (which, for the purposes of this clause 13 includes any signs or certificates on display at any location) referring to or featuring the Trade Marks, Target Rating and/or Design Reviewed Target Rating (as the case may be) at the cost of the Applicant.
- (c) Where clause 13(a)(i) applies, the Applicant may replace those withdrawn materials with Marketing Materials referring to or featuring the updated Target Rating or Design Reviewed Target Rating (as the case may be).
- (d) The National Administrator acknowledges that if the Applicant instigates the withdrawal of Marketing Materials in accordance with this clause, such withdrawal may not be effective immediately. For the avoidance of doubt, this clause does not affect the Applicant's obligations for immediate withdrawal under clause 13(a).

14. Intellectual property

- (a) The Applicant acknowledges and agrees that:
 - (i) the Trade Marks constitute valuable intellectual property belonging to the National Administrator and are protected by Law; and
 - (ii) any unauthorised use of the Trade Marks constitutes both infringement of the National Administrator's intellectual property rights and a breach of this Agreement.
- (b) All rights not expressly granted under this Agreement are reserved by the National Administrator, and no licence is granted for the use of the Trade Marks for any purpose beyond the approved uses in this Agreement.
- (c) The Applicant agrees that the National Administrator retains all intellectual property and other proprietary rights in the NABERS IP and agrees not to use

NABERS IP except in accordance with this Agreement.

- (d) The Applicant must not engage in or support any action, claim, opposition or challenge to the NABERS IP in any jurisdiction.
- (e) Any permitted use by the Applicant of the NABERS IP and the goodwill associated with them is for the sole benefit and advantage of the National Administrator.
- (f) The Applicant acknowledges that the NABERS IP and the associated goodwill possess special, unique and extraordinary characteristics, which make difficult the assessment of monetary damages that the National Administrator would sustain as a result of unauthorised use of the NABERS IP. The Applicant recognises that the National Administrator would suffer irreparable injury by such unauthorised use and agrees that injunctive and other equitable relief is appropriate in the event of a breach by the Applicant of any of the terms of this Agreement. Such remedy is not exclusive of any other remedies available to the National Administrator, nor is it deemed an election of remedies by the National Administrator.
- (g) The Applicant agrees that it will not reproduce, display or distribute any NABERS IP or any documents provided to it in connection with this Agreement in any way for any public or commercial purpose, including display on a website or in a networked environment unless with the prior written express authorisation of the National Administrator or otherwise in accordance with this Agreement.

15. Publicity rights

- (a) On and from the Agreement Date, the National Administrator may at its discretion publish on the Website:
 - (i) the Applicant's business name, Project name, Space Type and Rating Scope where applicable and Target Rating as set out in the Project Details;
 - (ii) the applicable Status; or
 - (iii) the Target Rating, Design Reviewed Target Rating and Certified Performance Rating for the Project.
- (b) This clause 15(a) survives expiry or earlier termination of this Agreement.
- (c) The National Administrator will endeavour to update the Applicant's Status on the Website every month.
- (d) Notwithstanding clause (c) the National Administrator does not warrant the correctness of the information on the published on the Website. The Applicant must promptly notify the National Administrator if it becomes aware that any information relating to the Applicant on the Website is incorrect or otherwise misleading.

16. Applicant warranties, acknowledgements and indemnities

16.1 Warranties and undertakings

- (a) The Applicant warrants and undertakes that:
 - (i) it has the corporate power to own its assets and to carry on its business as it is now being conducted;
 - (ii) it has control of the Project and it has the right, power and authority to enter into, perform and observe its obligations under this Agreement;
 - (iii) to the best of its knowledge after making diligent inquiry, and except as otherwise disclosed to the National Administrator, no conflict of interest exists, may be perceived to exist or is likely to arise in the performance by the Applicant of its obligations under this Agreement;
 - (iv) it must not do or cause to be done any act or thing which may impair the National Administrator's right, title and interest in the Trade Marks;
 - (v) all specifications and information that the Applicant provides to the Estimator, Reviewer and the National Administrator (including any employees, agents and independent contractors of those people) under this Agreement will be accurate and complete to the best of the Applicant's knowledge;
 - (vi) all information provided to by the Applicant under or in connection with this Agreement is:
 - (A) true, correct and complete in all material aspects; and
 - (B) not misleading or deceptive;
 - (vii) it has consulted with a legal adviser and obtained legal advice in respect of its rights and obligations under this Agreement or acknowledges that it has had the opportunity to do so; and
 - (viii) it will comply at all times with all applicable Laws in exercising its rights under this Agreement.
- (b) The Applicant acknowledges that the Estimator, Reviewer and National Administrator (jointly and severally), including any employees, agents and independent contractors of those people, rely on the:
 - (i) information that the Applicant provides under this Agreement; and
 - (ii) the warranties and undertakings provided by the Applicant under this Agreement.

16.2 If the Applicant is a Trust

- (a) Without limitation to clause 16.1, if the Applicant enters into this Agreement as a trustee of a trust (**Trust**), the Applicant represents and warrants that:
 - (i) the Trust has been duly established;
 - (ii) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (iii) on demand by the National Administrator, it will provide a true and correct copy of the trust deed of the Trust;
 - (iv) the Applicant has been validly appointed as the sole trustee of the Trust unless otherwise notified and approved by the National Administrator;
 - (v) there has been no action taken, or to the Applicant's knowledge proposed, to remove the Applicant as trustee;
 - (vi) the Applicant has full and valid power and authority to enter into this Agreement, own the assets in connection with this Agreement, and perform the obligations under it on behalf of the Trust;
 - (vii) the Applicant has entered into this Agreement for the proper administration and benefit of the Trust;
 - (viii) the Applicant has obtained or duly satisfied all necessary resolutions, consents, approvals and procedures to enter into this Agreement and perform its obligations under it;
 - (ix) entry into this Agreement is for the benefit of the beneficiaries of the Trust and as trustee it is authorised and empowered under the Trust Deed to enter into and to perform its obligations and satisfy or discharge its liabilities under this Agreement;
 - (x) the Applicant is not in breach of the deed establishing the Trust (**Trust Deed**); and
 - (xi) the Applicant has the right to be indemnified out of the assets of the Trust for any and all liabilities incurred by it under this Agreement.
- (b) To the extent that the Applicant is a custodian or trustee company, the Applicant may have the benefit of Schedule 3 provided that the Applicant indicates its desire to benefit from Schedule 3 in the appropriate section of the Project Details.
- (c) Prior to the Trustee being replaced as the trustee of the Trust in accordance with the Trust Deed:
 - (i) the Trustee must procure that the replacement trustee enters into a new agreement with the National Administrator on the same terms as this

Agreement;

- (ii) the Trustee (as outgoing trustee) must procure an agreement from the National Administrator on terms acceptable to the National Administrator, under which the National Administrator releases the Trustee from the requirement to observe and perform any future obligation under this Agreement;
 - (iii) the Trustee (as outgoing trustee) must release the National Administrator, from the requirement to observe and perform any future obligation under this Agreement; and
 - (iv) the Trustee (as the outgoing trustee) must pay the reasonable costs and expenses of the National Administrator in relation to entering into a new agreement under this clause 16.2(c).
- (d) Subject to any applicable limitations of liabilities under Schedule 3 (if applicable), the Trustee indemnifies the National Administrator, and agrees to keep the National Administrator indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 16.1(a) of this Schedule.

16.3 Reliance on Warranties

- (a) Each warranty will, unless otherwise specified, be made on the signing of this Agreement by the Applicant and be repeated each day of the term of this Agreement.
- (b) As soon as practicable after becoming aware of any matter which is likely to impact upon the accuracy of a warranty, or the Recipient's ability to comply with a warranty, the Applicant must give written notice to the National Administrator detailing that matter and its likely impact on the Applicant's ability to comply with that warranty.
- (c) The Applicant acknowledges and agrees that the National Administrator has entered into this Agreement and performs this Agreement in reliance on the warranties.

16.4 Acknowledgement

- (a) The Applicant acknowledges that:
- (b) Commitment Agreements, while regulated by specific rules developed by the National Administrator, also require discretion and judgment on the part of the National Administrator; and
- (c) the decision whether to grant or deny certification to a Project will be based on the results of an assessment by the National Administrator of the Independent Design

Review Report along with any other information that the National Administrator may reasonably require or use to determine the appropriateness of awarding a Design Reviewed Target Rating for the Project. The National Administrator will act reasonably in exercising any such discretion or judgment.

16.5 Release and indemnity

- (a) The Applicant indemnifies and will keep indemnified the National Administrator and the State of NSW and their officers, employees and agents (**Indemnified Parties**) from and against any Claims incurred or threatened against the Indemnified Parties arising out of or in connection with:
 - (i) the carrying out of works for the Project;
 - (ii) a breach by the Applicant or the Applicants Personnel of this Agreement;
 - (iii) a breach by the Applicant or the Applicants Personnel that is an infringement of the Intellectual Property of the National Administrator including without limitation with respect to any Trade Mark, the NABERS program or any third party;
 - (iv) the negligent, wrongful or unlawful act or omission by or on the part of the Applicant or the Applicant's Personnel in connection with this Agreement; or
 - (v) a breach of a warranty under clause 16.2;
 - (vi) any matter concerning a breach or alleged breach of the Australian Consumer Law by the Applicant or its Personnel.
- (b) The Applicant's liability to indemnify the Indemnified Parties under clause 16.5(a) will be reduced proportionally to the extent that the National Administrator caused any such Claim.
- (c) The Applicant releases the Indemnified Parties from all Claims and suits related to or arising from this Agreement and the Applicant's participation in the NABERS program, including but not limited to the:
 - (i) Applicant's estimation of a Target Rating;
 - (ii) application for the Design Reviewed Target Rating; and
 - (iii) Applicant's use of, or reliance on, the Rating Tool, the Handbook and the Trade Marks,
- (d) The Applicant acknowledges that the Assessor is not an agent of the National Administrator.
- (e) The Applicant agrees that in no event that the National Administrator have any liability under this Agreement, including but without limitation, in the case where

the National Administrator decides not to grant a Design Reviewed Target Rating to the Project (or any portion of the Project) for any reason.

16.6 Limitation of liability

- (a) To the extent permitted by Law, in no event will the National Administrator be liable to the Applicant for any indirect, special, incidental, economic or consequential damage or damages for negligence or any loss of profit however arising under this Agreement.

17. Transfer of rights in the project

- (a) If the Applicant wishes to sell, transfer or otherwise dispose of all or part of its rights in relation to the Project including the Project property (**Project Rights**), the Applicant must:
 - (i) notify the National Administrator in writing at least 30 Business Days' prior to the sale, transfer or other disposal of its Project (**Notice of Dealing**). The Notice of Dealing must include:
 - (A) the business details of the incoming party (**Incoming Party**), including a current ASIC company search; and
 - (B) details of any contracts, deeds or other agreements proposed to be entered into in respect of the sale, transfer or disposal (**Dealing**);
 - (ii) provide a copy of this Agreement to the Incoming Party; and
 - (iii) provide any other information requested by the National Administrator (acting reasonably), which may include, without limitation, copies of any proposed or finalised Dealings.
- (b) On receipt of the Notice of Dealing and without limitation, the National Administrator may, in its absolute discretion, elect to:
 - (i) terminate this Agreement under clause 18.1(b)(xii);
 - (ii) execute a deed of novation with the Applicant, Incoming Party and National Administrator on terms satisfactory to the National Administrator, in which case the Applicant:

- (A) must use reasonable endeavours to procure that the Incoming Party executes a deed of novation with the National Administrator and Applicant on terms acceptable to the parties, acting in good faith; and
 - (B) is responsible for all costs associated with the negotiation and execution of the deed of novation; and
- (iii) enter into a new Commitment Agreement to replace this Agreement with the Incoming Party.
- (c) If the National Administrator elects to enter into a new Commitment Agreement with the Incoming Party, then this Agreement terminates on the date that the new Commitment Agreement takes effect, as notified by the National Administrator to the Applicant in writing, without the need for any further act unless otherwise agreed by the parties to this Agreement.
- (d) Any action taken under clause 17(b), does not affect the rights, remedies or liabilities of the parties accruing prior to the date of termination or novation.
- (e) The Applicant consents, and must procure that the Incoming Party consents, to the National Administrator publicising on the Website any novation or termination of this Agreement pursuant to this clause.

18. Termination

18.1 Termination by the National Administrator

- (a) Without limitation to any other rights of the National Administrator except for 18.1(b), the National Administrator may terminate this Agreement immediately on written notice if the Applicant is in breach of this Agreement and has failed to remedy that breach in accordance with clause 18.3.
- (b) The National Administrator may terminate this Agreement without a requirement for remedy under clause 18.3 and without limitation to any other rights of the National Administrator, by providing the Applicant with a Termination Notice with effect on and from the date specified in the Termination Notice, if:
 - (i) NABERS program ceases;
 - (ii) the National Administrator no longer administers the NABERS program;
 - (iii) the Applicant engages in any conduct with respect to, or in connection with, this Agreement (including with respect to any Trade Marks) that is:
 - (iv) the Applicant is misleading or deceptive (including by omitting relevant facts); or

- (v) in the National Administrator's reasonable opinion the Applicant is likely to, or does, mislead or deceive (including by omitting relevant facts);
- (vi) the Applicant infringes or breaches NABERS IP or the intellectual property rights of any person;
- (vii) the Applicant is not awarded a Design Reviewed Target Rating by the National Administrator;
- (viii) if the National Administrator exercises its termination rights under the following clauses:
 - (A) clause 6(h) ("Independent Design Review");
 - (B) clause 8(e)(ii) ("Design Implementation and Changes");
 - (C) clause 10(d)(iii) ("Records, Access & Disclosure of Information"); or
 - (D) clause 17(b)(iii) ("Transfer of rights in the project");
- (ix) to the extent permitted by Law, the Applicant is subject to an Insolvency Event.

18.2 Termination by the Applicant

- (a) The Applicant may immediately terminate this Agreement, by written notice to the National Administrator, if the Applicant sells, transfers or otherwise disposes of the Project Rights and the Incoming Party does not wish to be bound by this Agreement or enter into a similar agreement with the National Administrator.
- (b) The Applicant may terminate this Agreement by written notice to the National Administrator if the National Administrator breaches this Agreement and fails to remedy such breach within a reasonable period (having regard to the nature of the breach) following receipt of notice from the Applicant requiring the breach to be remedied.

18.3 Remedy Notice

- (a) Subject to clause 18.3(b), prior to exercising its right of termination under clause 18.1(a) the:
 - (i) National Administrator must first gives the Applicant a written notice (**Remedy Notice**) which specifies the relevant breach and requires the Applicant to remedy the breach; and
 - (ii) Applicant must within 5 Business Days of receiving a Remedy Notice (or such other timeframe as agreed by the National Administrator), remedy the relevant breach to the satisfaction of the National Administrator.

The National Administrator may terminate this Agreement under clause 18.1(a) if the Applicant fails to remedy the relevant breach to the satisfaction of the National Administrator within the required remedy period.

- (b) Prior to exercising its right of termination under clause 18.1(b), the National Administrator:
 - (i) must consult with the Applicant with respect to the inaccuracy;
 - (ii) if the National Administrator determines that its concerns can be addressed with respect to the inaccuracy, the parties will agree a timeframe by which the Applicant must address the National Administrator's concerns to the satisfaction of the National Administrator; and
 - (iii) if the National Administrator's concerns are not addressed within the agreed timeframe under clause 18.3(b)(ii), the National Administrator may terminate this Agreement under clause 18.1(a).

18.4 Consequences of termination

- (a) A party's right of termination under this Agreement does not exclude or otherwise diminish the rights of that party to terminate this Agreement arising from common law, statute or any other term of this Agreement.
- (b) Termination of this Agreement:
 - (i) does not affect the rights, obligations and liabilities of the parties accrued prior to the date that the termination is effected; and
 - (ii) does not constitute a waiver of, and is without limitation to, any other rights or remedies of National Administrator, including without limitation, the right to seek and obtain damages for any breach of this Agreement by the Applicant or the Applicant's Personnel.

18.5 Applicant's responsibilities on termination

- (a) Without prejudice to any other clause of this Agreement, upon termination of this Agreement the Applicant must:
- (b) immediately cease any and all use of the NABERS IP, including without limitation, the Trade Marks;
- (c) remove the Design Reviewed Target Rating Certificate (if any) from public display;
- (d) cease to promote or otherwise refer to a Commitment Agreement or Target Rating or Design Reviewed Target Rating in connection with the Project; and
- (e) do such further things as may be reasonably required by the National Administrator to protect the National Administrator's rights, title and interest in the

Trade Marks and/or the Rating Tool.

19. Confidentiality

19.1 Confidential Information

- (a) Both parties must:
 - (i) keep confidential all the Confidential Information provided to it by the other party; and
 - (ii) not disclose any Confidential Information to a third party,
 - (iii) unless with the disclosing parties prior written consent or otherwise in accordance with this Agreement.
- (b) One party may disclose the Confidential Information of the other, if:
 - (i) such disclosure is required by Law;
 - (ii) such disclosure is necessary to perform the obligations under this Agreement and provided the recipient of the Confidential Information agrees to keep it confidential;
 - (iii) such disclosure is required to be made to prospective purchasers and capital partners of the Applicant, provided that the Applicant procures that each recipient of the Confidential Information strictly observes the obligations of the Applicant under this clause;
 - (iv) the Confidential Information is or becomes generally available in the public domain through no breach of this Agreement; or
 - (v) the National Administrator or the Applicant can demonstrate that it knew the Confidential Information before the other party to this Agreement disclosed such Confidential Information.
- (c) The National Administrator may disclose Confidential Information to:
 - (i) the relevant executive government of the National Administrator and/or the NABERS program (being either an Australian State Government or Australian Commonwealth Government) (**Relevant Government**) for the purpose of that government's functions or duties;
 - (ii) the Parliament or a Parliamentary Committee of the Relevant Government; and
 - (iii) present Ministers and their personnel of the Relevant Government.
- (d) The parties agree that negotiations relating to this Agreement constitutes Confidential Information until the Agreement Date.

- (e) This clause 19 continues to apply after expiry or termination of this Agreement.

19.2 Privacy

- (a) The Applicant will:
- (i) ensure that Personal Information that the National Administrator provides, or the Applicant collects under or in connection with this Agreement is used only for the purposes of this Agreement and is protected against loss and against unauthorised access, use, modification or disclosure or against other misuse;
 - (ii) unless the National Administrator is otherwise required or authorised by law to do so, not disclose any Personal Information without the written consent of:
 - (A) the individual to whom the Personal Information relates; or
 - (B) the National Administrator; and
 - (iii) comply with all Privacy Laws and any other applicable privacy laws and data protection laws as may be in force from time to time which regulate the collection, storage, use, access and disclosure of Personal Information.
- (b) The Applicant consents to the National Administrator disclosing or otherwise dealing with any data, Personal Information or other information more generally collected under this Agreement for the purposes of administering the NABERS program, reporting on the NABERS program, statistical and accounting purposes and otherwise performing the National Administrators functions and duties. This may include disclosure to NSW State and Commonwealth government agencies, parliament, executive, or present Ministers (and their offices employees) for the purposes noted above, acknowledging that the Commonwealth government owns and funds the NABERS program. The Applicant may obtain details of any Personal Information about the Applicant that the National Administrator holds by contacting the National Administrator.

20. Duties, taxes, levies & charges

- (a) The Applicant must promptly pay:
- (b) any duty, taxes, levies or charges payable in relation to the execution and performance of this Agreement, or any agreement or document executed or effected under this Agreement; and
 - (c) any taxable supply subject to the receipt of an appropriate tax invoice and/or that is imposed upon either party as a result of entering into and/or performing that

party's obligations under this Agreement.

21. Assignment

21.1 Generally

- (a) Subject to clause 17, the Applicant may not assign, transfer or novate any right or liability under this Agreement without the written prior consent of the National Administrator. The Applicant must comply with all requirements of the National Administrator in respect of any such assignment, transfer or novation.

21.2 Change in National Administrator

- (a) If the National Administrator ceases to be the Department of Climate Change, Energy, the Environment and Water represented by the Office of Energy and Climate Change (acting for and on behalf of the State of New South Wales) for any reason prior to termination or expiry of this Agreement, then the National Administrator may require the Applicant to enter into a deed:
 - (i) to vary this Agreement to replace the definition of "National Administrator" with the new national administrator; or
 - (ii) of assignment or novation with the new national administrator, to effect an assignment or novation of this Agreement on the same terms and conditions as this Agreement to the new national administrator (with only those changes required to effect the assignment or novation, or as otherwise agreed by the parties), for the balance of the term of this Agreement.
- (b) The Applicant acknowledges that the National Administrator may be subject to a Machinery of Government change throughout the term of this Agreement. Without limiting the options available to the National Administrator under clause 21.2(a), the Applicant acknowledges that changes made to the title, structure, department, legal entity, function or operations of the National Administrator as a result of an order made under State legislation may automatically apply to this Agreement on the terms specified in the State legislation without the need for further action.

22. Notices

22.1 Form

- (a) Any notice to or by a party under this Agreement must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender, including any director, secretary or person notified in that capacity by that corporate party, or under the seal of or any power of attorney conferred by the sender.

22.2 Service method

- (a) Service of communication by mail will be deemed to have been effected on the fifth Business Day after posting to the address nominated in the Project Details.

22.3 Change of address

- (a) Either party may change the address to which communications are to be directed by giving written notice to the other party of such changes by serving notice pursuant to this clause.

22.4 Email

- (a) A communication will be sufficiently served for the purposes of this Agreement if such communication is sent by email to the email address nominated in the Project Details and will be deemed to be duly given or made, when the email is opened and receipt acknowledged except where the time of dispatch is not between 09:00am and 5:00pm on a Business Day, in which case the notice will be deemed to have been received at the commencement of business on the next Business Day.

23. Dispute resolution

23.1 Notice of dispute

- (a) If a dispute arises in relation to this Agreement (**Dispute**), a party must comply with this clause 23 before starting arbitration or court proceedings, except proceedings for urgent interlocutory relief.
- (b) A party claiming that a Dispute has arisen must notify the other party within five 10 Business Days of that party becoming aware the Dispute has arisen (**Dispute Notice**).
- (c) Within 15 Business Days' of the Dispute Notice, a senior representative from each party must meet to discuss the Dispute and use all reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

23.2 Mediation

- (a) If the Dispute is not resolved:
 - (i) within 20 Business Days of notification under clause 23.1; or
 - (ii) such longer period as agreed by the parties in writing,
 - (iii) either party may refer Dispute to mediation in accordance with this clause 23.1 and the other party must submit to the mediation.
- (b) The mediation will be administered by Resolution Institute (RI) ACN 008 651 232.

- (c) The mediator will be a person who is independent of the parties and who is appointed by agreement of the parties or, failing agreement within five Business Days from the day on which the matter has been referred to mediation, by a person nominated by RI through its nomination service. The fees in respect of the nomination service provided by RI are to be borne equally by the parties.
- (d) Any mediation meetings or proceedings under this clause must be held in Sydney.
- (e) The RI Mediation Rules (as amended from time to time) will apply to the mediation.
- (f) Unless otherwise stated in the RI Mediation Rules (as amended from time to time) the remuneration of the mediator will be split evenly by the parties. Each party to a dispute must pay its own costs of complying with this clause.
- (g) All communications during the mediation are confidential and must be treated as made in the course of compromise and settlement negotiations for the purposes of the applicable rules of evidence.
- (h) It is a condition precedent to the right of either party to commence arbitration or litigation, that it has first offered to submit the Dispute to mediation.

23.3 Commencing proceedings

- (a) A party must not start court proceedings in relation to a Dispute until it has exhausted the procedures in this clause 23 unless the party seeks injunctive or other urgent interlocutory relief.

23.4 Continuation of rights and obligations

- (a) Despite the existence of a Dispute, each party must continue to perform this Agreement.

23.5 Exception

- (a) Despite the provisions of this clause 23, the National Administrator will not be required to comply with this clause and may terminate this Agreement with immediate effect or exercise its other rights under this Agreement or at Law if the National Administrator determines, in its absolute discretion, that the Applicant is responsible for or involved with any false, misleading or deceptive conduct or conduct that is likely to be false, misleading or deceptive in respect of any matter arising from this Agreement.

24. Miscellaneous

24.1 Survival

- (a) The parties agree that clauses 1, 2.2, 2.3, 10, 11(b), 11(c), 11(d), 11(e), 11(f), 12, 13, 14, 15, 16, 18.3, 18.5, 19, 23 and 24 of this Agreement will survive termination of this Agreement.

24.2 National Administrator assignment, novation or transfer

- (a) Nothing in this Agreement restricts or otherwise limits the National Administrators rights to transfer, assign, novate, dispose of or encumber any of its rights, obligations or interests under this Agreement (**Dealing**). The Applicant acknowledges that the National Administrator may undertake any Dealing at any time on notice to the Applicant. The Applicant must promptly undertake and execution any action required to effect the required Dealing, including executing any required documentation (on terms acceptable to the National Administrator).
- (b) The Applicant acknowledges that:
 - (i) the National Administrator may be subject to a machinery of government change by executive order made under New South Wales legislation (**Order**); and
 - (ii) an Order is not an assignment, transfer, novation or disposal of any part of this Agreement; and
 - (iii) each Order will be effected in accordance with the terms of the relevant Order.
- (c) Without limitation, a machinery of government change may include changes to the title, structure, department, function or operations of the National Administrator as a result of the relevant Order.
- (d) The parties will promptly undertake and execute any action required to comply with each relevant Order.

24.3 Applicable law

- (a) This Agreement is governed by and construed under the laws of the State of New South Wales.

24.4 Jurisdiction

- (a) Each party agrees to submit to the non-exclusive jurisdiction of the courts of New South Wales, including without limitation, with respect to both itself and its property.

24.5 Third parties

- (a) This Agreement confers rights only upon a person expressed to be a party or

expressed to benefit from this Agreement, and not upon any other person, including an Applicant's Representative or the Applicant's Personnel.

24.6 Applicant's Representative

- (a) If the Applicant nominates a Representative:
- (b) the Applicant confirms that the Representative has been granted authority to administer the Agreement in relation to the Project on its behalf, and with the full knowledge of the Applicant;
- (c) the Applicant accepts that it will be liable under this Agreement for the actions of its Representative, as if those same actions were taken by the Applicant;
- (d) the Applicant must notify the National Administrator promptly of the revocation of authority of any Representative;
- (e) the National Administrator may rely on instructions and information provided by the Representative as if they were provided by the Applicant;
- (f) any information or instructions provided by the Representative to the National Administrator, the Estimator, the Reviewer or the Accredited Assessor will be deemed to have been given by the Applicant; and
- (g) the National Administrator may discuss the Project and all matters arising under this Agreement with the Representative as if the Representative were the Applicant.

24.7 Pre-contractual negotiation

- (a) This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter. It sets out the only conduct, representations, warranties, covenants, conditions or understandings (collectively, the '**Conduct**') relied on by the parties and supersedes all earlier Conduct between the parties in connection with its subject matter. Neither party has relied on nor is relying on any other Conduct in entering into this Agreement and completing the transactions contemplated by it.

24.8 Further assurance

- (a) Each party must execute any document and perform any action necessary to give full effect to this Agreement, whether prior or subsequent to performance of this Agreement.

24.9 Waivers

- (a) Any failure or delay by any party to exercise any right under this Agreement does

not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

24.10 Remedies

- (a) The rights of a party under this Agreement are cumulative and not exclusive of any rights provided by Law.

24.11 Severability

- (a) Any provision of this Agreement which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

24.12 Joint and several liability

- (a) Any obligation to be performed or restriction to be observed under this Agreement by two or more persons binds them jointly and severally.

24.13 Counterparts

- (a) This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one agreement.

24.14 Electronic Executions

- (a) Each party consents to this document and any variations of this document being signed by electronic signature by the methods set out in this clause.
- (b) This clause applies regardless of the type of legal entity of the parties. If this document or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this document and any variation of it:
 - (i) insertion of the person's name on to the document;
 - (ii) insertion of the person's name on to the document; or
 - (iii) use of a stylus or touch finger on a touch screen to sign the document;

provided that in each of the above cases, words to the effect of
'*Electronic signature of me, [NAME], affixed by me on [DATE]*' are
also included on the document;

- (iv) use of a reliable electronic signature and exchange platform (such as

DocuSign or AdobeSign) to sign the document; or

- (v) as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this document and that electronic signing of this document by or on behalf of a party indicates that party's intention to be bound.
- (e) A signed copy of this document transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this document for all purposes.

Executed as an Agreement.

Signed for and on behalf of NABERS by its authorised signatory but not so as to incur personal liability:

Signature of Authorised Signatory	Signature of Witness
Name of Authorised Signatory	Name of Witness
Director, NABERS, Department of Climate Change, Energy, The Environment and Water	12 Darcy Street, Parramatta NSW 2150
Position of Authorised Signatory	Address of Witness

By signing this document, the witness states that it witnessed the signing of this document over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).

Date

[Insert correct execution block for the Applicant entity – e.g. see various execution blocks below. Also, if the Applicant includes a Custodian – then both the Custodian and the Trustee company for the trust must sign this Agreement. If there are multiple entities in a joint application, each entity must sign the Agreement]

Where an individual is executing in its personal capacity:

Executed as an agreement by
in the presence of:

.....
Signature of witness

.....
Signature of

By signing this document, the witness states that it witnessed the sign document over audio visual link (and signed as a witness in counterpart if in accordance with section 14G of the Electronic Transactions Act 2000)

.....
Name of witness in full

.....
Address of Witness

.....
Occupation of Witness

Where a company is executing under section 127(1) of the *Corporations Act* and the company has multiple officers:

Executed by (ACN)
in accordance with section 127(1) of the Corporations Act 2001:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director in full

.....
Name of Director/Secretary in full

Where a company is executing under section 127(1) of the *Corporations Act* and the company has a sole director/secretary:

Executed by _____ (ACN _____)
in accordance with section 127(1) of the Corporations Act 2001:

Signature of Director/Secretary

Name of Director/Secretary in full

Where a company is acting as a Trustee, and is executing under section 127(1) of the *Corporations Act* and the company has multiple officers:

Executed by _____ (ACN _____)
as trustee for
in accordance with section 127(1) of the Corporations Act 2001:

Signature of Director

Signature of Director/Secretary

Name of Director in full

Name of Director/Secretary in full

Where a company is acting as a Trustee, and is executing under section 127(1) of the *Corporations Act* and the company has a sole director/secretary:

Executed by _____ (ACN _____)
as trustee for
in accordance with section 127(1) of the Corporations Act 2001:

Signature of Director/Secretary

Name of Director/Secretary in full

Where a company is acting as a Custodian, and is executing under section 127(1) of the *Corporations Act* and the company has multiple officers:

Executed by _____ (ACN _____)
as custodian for
in accordance with section 127(1) of the Corporations Act 2001:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director in full

.....
Name of Director/Secretary in full

Where a company is acting as a Custodian, and is executing under section 127(1) of the *Corporations Act* and the company has a sole director/secretary:

Executed by _____ (ACN _____)
as custodian for
in accordance with section 127(1) of the Corporations Act 2001:

.....
Signature of Director/Secretary

.....
Name of Director/Secretary in full

Schedule 1. Rating licence period, rights and status

RATING TYPE	APPLICABLE LICENCE PERIOD	APPLICABLE RIGHTS	APPLICABLE STATUS
Target Rating	<p>The Target Rating Licence Period commences on the Agreement Date and expires on the earliest of:</p> <ul style="list-style-type: none"> • The date the Project is awarded a Design Reviewed Target Rating; • The Construction Certificate Date for the Project; and • The date this Agreement is terminated or expires for any reason. 	<ul style="list-style-type: none"> • Use of word “NABERS” only and no other Trade Marks. • Use of the word “NABERS” is limited to use on standard size documents and on websites and social media. The word “NABERS” may not be used on large signs, banners etc. • Use of the word “NABERS” word must be accompanied by the words “Targeting” or “Nominated Target Rating” (and mentioning the Space Type and Rating Scope). For example: “Nominated NABERS [Space Type and Rating Scope] Target Rating of [specify Target Rating] Stars with a signed Commitment Agreement”; • The font size to be used for the word “Target” or “Targeting” must be the same font size used for the word “NABERS” or larger. • Only the Target Rating that has been nominated (and is current at the relevant time) for the Project may be referred to. 	In progress (Agreement signed)
Design Reviewed Target Rating	<p>The Design Reviewed Target Rating Licence Period commences on the date on which the Design Reviewed Target Rating is awarded by the National Administrator and expires 3 years after the date on which the Design Reviewed Target Rating unless this Agreement is earlier terminated.</p>	<ul style="list-style-type: none"> • Use of the word “NABERS” and other Trade Marks associated with Design Reviewed Target Rating and the Design Reviewed Target Certificate (subject to the below). • Use of the word “NABERS” must be accompanied by the words “Design Reviewed Target Rating” (and mentioning the Space Type and Rating Scope). For example: 	In progress (Design Reviewed Target Rating)

	<p>NOTE: the Design Reviewed Target Rating Licence Period may be extended in accordance with clauses 7(c) and 7(d) and if extended, the definition is automatically updated in accordance with those provisions.</p>	<p>“NABERS [Space Type and Scope] Design Reviewed Target Rating of [specify Target Rating] Stars”;</p> <ul style="list-style-type: none"> • The NABERS word and other Trade Marks may appear on large signs and banners and the Design Reviewed Target Rating Certificate may be displayed. • The font size to be used for the word “Target” must be the same font size used for the word “NABERS” or larger. • Only the Design Reviewed Target Rating that has been awarded (and is current at the relevant time) may be referred to. • Display of the then-current Design Reviewed Target Rating Certificate and logo. 	
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Other possible Status options are as follows:

Status name	Description
Not valid - terminated by the National Administrator	<ul style="list-style-type: none"> • If the National Administrator terminated a Commitment Agreement. • This status is a final status for the Project.
Not valid - terminated by Applicant	<ul style="list-style-type: none"> • If the Applicant terminates a Commitment Agreement. • This status is a final status for the Project.
Not valid – terminated due to Project transfer	<ul style="list-style-type: none"> • If the Applicant sells some or all of the Project and the purchaser does not sign a deed of novation of the Agreement
Achieved	<ul style="list-style-type: none"> • Status valid once a Project's first (or second, in specific cases) Certified Performance Rating is awarded that is equal to or higher than the Project's Design Reviewed Target Rating. • This status is a final status for the Project.
Not achieved	<ul style="list-style-type: none"> • Status valid once a Project's first (or second, in specific cases) Certified Performance Rating is awarded with a star rating that is less than the Project's Design Reviewed Target Rating. • This status is a final status for the Project.

Schedule 2. Data Collection Start Date

The Data Collection Start Date must occur by the date specified below for each Space Type and Rating Tool:

Office Energy	<p>The earlier of:</p> <ul style="list-style-type: none"> - the day minimum criteria to rate office for the relevant Rating Scope are met according to the Rules for offices; or - the date that is 2 years after the Occupancy Certificate is issued for the Project.
Hotel Energy	15 months after the hotel opens or is re-opened to the public.
Shopping centre Energy	15 months after the shopping centre is opened or re-opened to the general public.
Data centre Energy	<p>The day minimum criteria to rate data centre for the relevant Rating Scope are met according to the Rules for data centre.</p> <p>For IT equipment Rating Scope only: certified performance rating to be achieved within six months of commissioning date as per the Rules.</p>
Apartment Building Energy	<p>The earlier of:</p> <ul style="list-style-type: none"> - The day minimum criteria to rate apartment building for the relevant Rating Scope are met according to the Rules for apartment buildings; or - the date that is 2 years after the Occupancy Certificate is issued for the Project.
Residential Aged Care and Retirement Living Energy	<p>The earlier of:</p> <ul style="list-style-type: none"> - The day minimum criteria to rate residential aged care or retirement living for the relevant Rating Scope are met according to the Rules for residential aged care and retirement living; or - 75% occupancy has achieved (For residential aged care, this means that 75% of the rated premise's aged care places capacity is occupied. For retirement living, this means that 75% of dwellings are occupied).
Warehouses and Cold Stores Energy	<p>The earlier of:</p> <ul style="list-style-type: none"> - The day minimum criteria to rate warehouses and cold stores for the relevant Rating Scope are met according to the Rules for warehouses and cold stores; or - the date that is 12 months after the Occupancy Certificate is issued for the Project.

Schedule 3. Limitation of Trustee Liability

Option 1 – For Schedule 3, this option 1 should be used when the Applicant is a trustee company for a Trust. If however, the Trust involves a Custodian, then Option 2 (next page) will be more suitable.

This Schedule is only applicable to a trustee company.

1. The Trustee enters into this Agreement in its capacity as the trustee for the Trust constituted by a trust deed (**Trust Deed**).
2. Subject to clause 1.1.4 of this Schedule, liability arising under or in connection with this Agreement (except under or in connection with clause 1 of this Schedule above) is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.
3. No party to this Agreement or any person claiming through or on behalf of them will be entitled to:
 - a) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;
 - b) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any Liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or
 - c) enforce or seek to enforce any judgment in respect of a liability under this Agreement or otherwise against the Trustee in any capacity other than as Trustee of the Trust,except under or in connection with clause 1 of this Schedule above.
4. Notwithstanding any other provision of this Agreement, clauses 2 and 3 of this Schedule do not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of Law, a reduction in the extent of the Trustee's indemnification, or loss of the Trustee's right of indemnification, out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as trustee of the Trust.
5. Nothing in clause 4 of this Schedule will make the Trustee liable for any claim for an amount greater than the amount which the National Administrator would have been able to claim and recover from the assets of the Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

Schedule 3. Limitation of Custodian and Trustee Liability

Option 2 – For Schedule 3, this option 2 should be used when the Applicant involves a Custodian of a trust.

This Schedule is only applicable to a custodian and a trustee company.

Definitions

1. A reference to “Custodian” and “Trustee” means the entities identified in the Project Details.

The Custodian

2. The Custodian enters into this Agreement as agent of the Trustee. The Custodian only acts in accordance with the terms and conditions of the document under which it is appointed as the Trustee's agent and is not liable under any circumstances to any party under this Agreement.
3. The Custodian must carry out the obligations under this Agreement to the extent that the same are capable of being carried out by it as Custodian and are not capable of being carried out by the Trustee (**Custodian Obligations**).
4. The Trustee must perform the obligations under this Agreement with the exception of the Custodian Obligations and must procure that the Custodian performs the Custodian Obligations.
5. This limitation of the Custodian's liability applies despite any other provision of this Agreement and extends to all liabilities and obligations of the Custodian in any way connected with any obligation including representation or warranty arising out of this Agreement.
6. The Custodian is not required to do or refrain from doing anything under this Agreement unless the Custodian's liability is limited in the same manner as set out in this clause 2.
7. No attorney, agent, receiver or receiver and manager appointed under this Agreement has authority to act on behalf of the Custodian in a way which exposes the Custodian to any liability.
8. If, whether by the express provisions of this Agreement or by implication of law, the Custodian makes or is taken to have made any representation or warranty then, those representations and warranties are taken to have been made by the Trustee.

The Trustee

9. The Trustee enters into this Agreement in its capacity as the trustee for the Trust constituted by a trust deed (**Trust Deed**).
10. Subject to clause 11 of this Schedule, liability arising under or in connection with this Agreement (except under or in connection with clause 11 of this Schedule above) is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability extends to all liabilities and obligations of the Trustee in any way connected with any representation,

warranty, conduct, omission, agreement or transaction related to this Agreement.

11. No party to this Agreement or any person claiming through or on behalf of them will be entitled to:

- a) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;
- b) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any Liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or
- c) enforce or seek to enforce any judgment in respect of a liability under this Agreement or otherwise against the Trustee in any capacity other than as Trustee of the Trust,

except under or in connection with clause 9 of this Schedule above.

12. Notwithstanding any other provision of this Agreement, clauses 9 and 11 of this Schedule do not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of Law, a reduction in the extent of the Trustee's indemnification, or loss of the Trustee's right of indemnification, out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as trustee of the Trust.

13. Nothing in clause 11 of this Schedule will make the Trustee liable for any claim for an amount greater than the amount which the National Administrator would have been able to claim and recover from the assets of the Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

Schedule 4. Applicant's request for licence period extension of Design Reviewed Target Rating

1. Project

This Confirmation applies to the Project identified below:

- Project name:
- Commitment Agreement number:
- Evidence to justify request provided to the National Administrator:

2. Applicant

The term Applicant, as defined in the Agreement, is identified below:

- Applicant's name:
- Applicant's Representative name:
- Email address

By signing below, the Applicant requests the National Administrator to extend the licence period of the Design Reviewed Target Rating by an additional two (2) years from the existing end date of the Design Reviewed Target Rating Licence Period for the Project. The Applicant acknowledges that this request will be assessed by the National Administrator in its discretion.

3. Execution

The Applicant to all the provisions of this request in Schedule 4.

Applicant

Signature of Applicant

Name

Title

Date

Approved by the National Administrator

Y/N Signature:

Schedule 5. Applicant’s request for status extension – second certified performance rating

1. Project

This Confirmation applies to the Project identified below:

- Project Name:
- Commitment Agreement Number:
- Energy Efficiency Improvement plan to justify Request provided to the National Administrator:

2. Applicant

The term Applicant, as defined in the Agreement, is identified below:

- Applicant’s Name:
- Applicant’s Representative name:
- Email address

By signing below, the Applicant requests the National Administrator to delay publication of the final Status of the Commitment Agreement for the Project pending a second Certified Performance Rating for the Project. The Applicant acknowledges that this request will be assessed by the National Administrator in its discretion.

3. Execution

The Applicant to all the provisions of this Request

Applicant	
Signature of Applicant	
Name	
Title	
Date	

Approved by the National Administrator

Y/N Signature:

Schedule 6. Applicant’s Re-Assessment Request for Commitment Agreement achievement to be assessed based on the emissions factors available at the time of signing

1. Project

This Confirmation applies to the Project identified below:

- Project Name:
- CA Number:

2. Applicant

The term Applicant, as defined in the Agreement, is identified below:

- Applicant’s Name:
- Applicant’s Representative name:
- Email address

By signing below, the Applicant requests the National Administrator to assess any supporting evidence to demonstrate the Certified Performance Rating would have been achieved by the National Greenhouse Accounts Factors available at the time the Commitment Agreement was signed. If the National Administrator approves the request, the Status of the Commitment Agreement can be listed as ‘Achieved’ on the NABERS Website.

To avoid any doubt, the National Administrator’s approval of this request does not replace the Applicant’s obligation to obtain a Certified Performance Rating for the project, which will be assessed based on the latest National Greenhouse Accounts Factors used by NABERS at the time it makes its determination.

3. Execution

The Applicant to all the provisions of this Request

Applicant			
Signature of Applicant			
Name			
Title			
Date			

Approved by the National Administrator

Y/N Signature:

Schedule 7. Requirements for executing the Agreement after the Construction Certificate Date

1. Project

This Confirmation applies to the Project identified below:

- Project Name:
- CA Number:

2. Applicant

The term Applicant, as defined in the Agreement, is identified below:

- Applicant's Name:
- Applicant's Representative name:
- Email address:

By signing this Agreement and this Schedule 7, the Applicant acknowledges the Project may encounter additional risks to achieving the Target Rating and the Applicant must take additional steps to mitigate these risks. These steps include:

- Submitting an Independent Design Review Report to the National Administrator within four (4) months of the Agreement Date, as specified in clause 6(b)(ii)(B);
- Having the Applicant's Project teams consider and address risks outlined in the Independent Design Review and report on actions against these risks to the National Administrator; and
- Monitoring the Project in early operation before the first Certified Performance Rating to identify variations from predicted energy use. The Applicant must take steps to address these risks and increase the likelihood of the Project achieving its Design Reviewed Target Rating. The National Administrator must be notified of any variations and steps taken to address these variations and risks.

3. Execution

The Applicant to all the provisions of this Request

Applicant

Signature of Applicant

Title

Date

Approved by the National Administrator

Y/N Signature: