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# NABERS API Terms and Conditions of Use

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## Details

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|---------------------------|--|--|
| <b>Department</b>         | Name   | The Crown in right of the State of New South Wales acting through the NSW Department of Climate Change, Energy, the Environment and Water, as the entity responsible for administering, managing and developing the NABERS national government program.                                    |
|                           | ABN  | 27 578 976 844   |
|                           | Address for Notices                            | 4PSQ, 12 Darcy Street, Parramatta NSW 2150   |
|                           | Email address for Notices                      | nabers@environment.nsw.gov.au  |
| <b>API User (“You”)</b>   | Name   |  |
|                           | ABN  |  |
|                           | Address for Notices                            |  |
|                           | Email address for Notices                      |  |
| <b>NABERS API product</b> | <input type="checkbox"/> Rating Calculator API |  |
|                           | <input type="checkbox"/> Rating Register API   |  |
|                           | Note: Details on:                              |  |
|                           | -  | the rating products covered by the Rating Calculator API are as specified on the NABERS Website at <a href="https://www.nabers.gov.au/ratings/pricing">https://www.nabers.gov.au/ratings/pricing</a> ; and   |
|                           | -  | the data available through the Rating Register API is as specified at <a href="https://www.nabers.gov.au/ratings/pricing">https://www.nabers.gov.au/ratings/pricing</a> , each of which may be subject to change from time to time in accordance with clause 27(c) and 27(d) respectively. |

|  |   |
|--|---|
| <b>Licence Tier<br/>(Rating Calculator<br/>API only)</b> | <input type="checkbox"/> Low Volume<br><br><input type="checkbox"/> High Volume<br><br>Note: The Licence Tier is only applicable to the Rating Calculator API. If only the Rating Register is selected above, no selection is required here.<br><br>Note: The usage limits applicable to each Licence Tier are as specified on the NABERS Website at <a href="https://www.nabers.gov.au/ratings/pricing">https://www.nabers.gov.au/ratings/pricing</a> and otherwise as applicable in accordance with clause 19.  |
| <b>Commencement<br/>Date</b>                             | The date on which Fulfilment occurs in accordance with clause 4.  |
| <b>Initial Term</b>                                      | The 1 year period from the Commencement Date.   |
| <b>Fees</b>  | The annual fee(s) for the relevant NABERS API as specified on the NABERS Website at <a href="https://www.nabers.gov.au/ratings/pricing">https://www.nabers.gov.au/ratings/pricing</a> as at:<br><br>(a) for the Initial Term, the date on which the last party signs this Agreement;<br><br>(b) for any Renewal Period, the date the Department receives a Renewal Notice in accordance with clause 14; and<br><br>(c) for any Licence Upgrade, Additional API or Technical Request Limit Increase, the date the Department receives your request in accordance with clause 20, 23 or 29 (as applicable). |

## Background

- A. NABERS is a national program administered by the Department which aims to enable the design, construction, and operation of more sustainable buildings. It achieves this by providing reliable and comparable information on building performance to support informed decisions that lead to positive environmental, social, and economic outcomes.
- B. The Department has developed the following application programming interfaces:
  - a. the '**Rating Calculator API**' to allow customers to programmatically calculate data using the NABERS Algorithms for certain rating products which are as specified on the NABERS Website at <https://www.nabers.gov.au/ratings/pricing> (**Available Ratings**) (which may be subject to change in accordance with clause 27(c)); and
  - b. the '**Rating Register API**' to allow customers to retrieve data for public ratings available in NABERS Perform for the sectors, scopes and rating types specified at <https://www.nabers.gov.au/ratings/pricing> (**Available Register Data**) (which may be subject to change in accordance with clause 27(d)).
- C. This Agreement outlines the terms and conditions for the API User's use of the NABERS API. It refers to NABERS and all its associated terminology.

## Agreement Terms

### Overview

1. The Department will provide you with use of the NABERS API, and you are free to integrate the NABERS API into your software or system to generate estimated ratings and reports for the Term, provided that you accept and comply with the terms of this Agreement and the Department's policies, including the Department's Privacy Statement and the NABERS Terms of Service (the **Policies**).
2. You agree that the Policies, which may change from time to time, form part of this Agreement and by accepting this Agreement you agree to be bound by all the terms and conditions of this Agreement including the Policies. To the extent of any inconsistency between the Policies and the other terms set out in this Agreement, the terms of this Agreement will prevail to the extent of that inconsistency.

### Payment

3. The Department may issue the invoice to the API User for the Fees for the Initial Term at any time on and from the date that this Agreement is signed by the API User.
4. Following the payment of the Fees for the Initial Term by you, the Department will supply you with the API Key and the Materials (**Fulfilment**).
5. The Fees in respect of any products, services or features added by you during the Term, including any Additional API, Licence Upgrade or Technical Request Limit Increase, will be adjusted on a pro-rata basis for the remainder of the Term.
6. Subject to clause 50 and 51, the API User acknowledges that the Fees are not refundable under any circumstance, and the API User will not be entitled to recover any or all of the Fees that it has paid to the Department.

### GST

7. Words used in this clause that are not defined in clause 69 have the meaning given in the GST Law.
8. Unless otherwise specified, all amounts payable under this Agreement are exclusive of GST.
9. If a supply made under this Agreement 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.
10. 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.
11. If there is an adjustment to a taxable supply made under this Agreement, then the Supplier must provide an adjustment note to the Recipient.

12. The amount of a party's entitlement under this Agreement 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.

## **Term**

### *Initial Term*

13. Subject to clause 56 (Survival), this Agreement commences on the Commencement Date and continues in force for the Initial Term specified in the Details, unless terminated earlier or extended in accordance with its terms.

### *Renewal Periods*

14. If the API User wishes to extend the Term beyond the Initial Term (or any current Renewal Period) for a further Renewal Period, it must give the Department a Renewal Notice by no later than 20 Business Days before the end of the then current Term (the Department has absolute discretion to accept a shorter notice period, including during any deemed extension period in accordance with clause 16).
15. The Department may, in its sole discretion, agree to any Renewal Period and to grant the relevant licence requested by the API User in accordance with clause 14 by:
  - (a) written Notice to the API User accepting the extension of the Term in accordance with the terms and conditions set out in the Renewal Notice; and/or
  - (b) issuing an invoice to the API User for the relevant Fees for the NABERS API specified in the Renewal Notice,before the end of the then current Term (which may be extended by the Department in accordance with clause 16).
16. The Department may in its absolute discretion continue to allow you access to the NABERS API beyond the end date of the then current Term in which case:
  - (a) subject to any further Renewal Period subsequently agreed in accordance with clause 14 and 15, the Term will deemed to be extended until the earlier of:
    - (i) written Notice from the API User that it no longer requires use of the NABERS API; or
    - (ii) the date on which the Department terminates your access and / or use of the NABERS API; and
  - (b) the same terms and conditions of this Agreement as applicable at the end of the then current Term shall continue to apply during any deemed extension of the Term in accordance with this clause 16.
17. The Department reserves the right to suspend your access to the NABERS API if, following an invoice being issued by the Department in accordance with clause 15, payment of the relevant Fees for the Renewal Period are not received from you before commencement of the relevant Renewal Period until all Fees have been paid by you.

18. Subject to any change to the API User's relevant NABERS API and Licence Tier specified in the Renewal Notice, any Renewal Period agreed in accordance with clause 15 will be on the same terms and conditions of this Agreement as in effect at the end of the then current Term, unless the parties agree to amend this Agreement in accordance with clause 55.

### **Licence Tiers (Rating Calculator API only)**

19. Your licence to use the NABERS API during the Term subject to the restrictions and other terms set out in this Agreement is further subject to the relevant usage limits applicable to each Licence Tier as specified on the NABERS Website at <https://www.nabers.gov.au/ratings/pricing> as at:
  - (a) for the Initial Term, the date on which the last party signs this Agreement; and
  - (b) for any Renewal Period, the date the Department receives a Renewal Notice in accordance with clause 14.
20. You may request in writing to the Department to upgrade your Licence Tier at any time during the Term (**Licence Upgrade**). The granting of a Licence Upgrade is at the sole discretion of the Department. If agreed by the Department, the Department will issue an invoice to the API User for the relevant Fees in respect of the Licence Upgrade and upon the payment to the Department of all such Fees, the increased usage limits in respect of the NABERS API applicable to the relevant upgraded Licence Tier will be made available to you in accordance with this Agreement.
21. For the avoidance of doubt, the Term will not change as a result of a Licence Upgrade being made available by the Department in accordance with clause 20 and, if applicable, the Fees for the Licence Upgrade will be adjusted on a pro-rata basis in accordance with clause 5.
22. The Department reserves the right to suspend your access to the NABERS API if you exceed the usage limits applicable to your Licence Tier. Access may not be restored unless:
  - (a) the Department is reasonably satisfied that you have reduced your usage of the NABERS to be within the relevant usage limits applicable to your Licence Tier; or
  - (b) you upgrade to the relevant Licence Tier for your usage of the NABERS API in accordance with clause 20.

### **Additional NABERS API products**

23. You may request in writing to the Department the right to use any additional NABERS API (not selected in the Details) (**Additional API**). If applicable, such request must include the requested Licence Tier for the Additional API. If agreed by the Department, the Department will issue an invoice to the API User for the relevant Fees in respect of the additional NABERS API requested and upon the payment to the Department of all such Fees, your use of that Additional API will be included in the NABERS API made available to you in accordance with this Agreement.

24. For the avoidance of doubt, the Term will not change as a result of an Additional API being made available by the Department in accordance with clause 23 and, if applicable, the Fees for the Additional API will be adjusted on a pro-rata basis in accordance with clause 5.

### Use of the NABERS API

25. You must not:
- (a) give access to the NABERS API or the Materials to third parties; or
  - (b) use the NABERS API in an unreasonable way, including use that:
    - (i) would breach any laws or regulations or infringe any third party rights;
    - (ii) would be likely to overload the Department web infrastructure or otherwise disrupt or limit access by others;
    - (iii) adversely impacts the operation of the NABERS API or the NABERS Website, or makes unauthorised modifications to the NABERS API; or
    - (iv) sends spam, transmits a bug, virus or other disabling feature or otherwise violates the security of the NABERS Website or the NABERS API.
26. The Department makes the NABERS API available to you in accordance with this Agreement in good faith but does not guarantee the security of the NABERS API and makes no representation, and, to the extent permitted by law, gives no warranty, that:
- (a) subject to clause 33(c), the NABERS Algorithms are accurate, current or complete; or
  - (b) access to the NABERS API will be uninterrupted, error, bug or virus-free, or secure.

You acknowledge that it is your responsibility to implement sufficient procedures and virus checks to satisfy your own requirements.

27. The Department reserves the right to:
- (a) issue a revised or replacement NABERS API at any time, provided that it will notify you by email or on the NABERS Website of any revised or replacement NABERS API and issue you with a new API Key if required;
  - (b) change or alter the NABERS scheme and/or the NABERS Algorithms and/or the Logos at any time without notice;
  - (c) change or alter the Available Ratings at any time without notice; and/or
  - (d) change or alter the Available Register data at any time without notice.

### Technical Request Limits

28. Subject to clause 29, you must not in your use of the NABERS API, exceed the API request limits specified on the NABERS Website at <https://www.nabers.gov.au/rating-tools/our-apis/nabers-api> (**Technical Request Limits**).
29. You may request in writing to the Department an increase to your Technical

Request Limits (**Technical Request Limit Increase**). If agreed by the Department, the Department will issue an invoice to the API User for the relevant Fees in respect of the Technical Request Limit Increase (as specified on the NABERS Website at <https://www.nabers.gov.au/ratings/pricing>). Upon the payment to the Department of all such Fees, your licence to use the NABERS API in accordance with this Agreement will be subject to the relevant increased Technical Request Limits.

30. For the avoidance of doubt, the Term will not change as a result of a Technical Request Limit Increase being made available by the Department in accordance with clause 29 and, if applicable, the Fees for the Technical Request Limit Increase will be adjusted on a pro-rata basis in accordance with clause 5.
31. The Department reserves the right to:
  - (a) suspend your access to the NABERS API if you exceed your relevant Technical Request Limits and access may not be restored unless:
    - (i) the Department is reasonably satisfied that you have reduced your usage of the NABERS to be within the relevant Technical Request Limits; or
    - (ii) you upgrade your licence under this Agreement pursuant to a Technical Request Limit Increase in accordance with clause 29; and
  - (b) change or alter the Technical Request Limits at any time without notice.

### AI Systems

32. You must not use the NABERS API or any data or other content created through your use of the NABERS API in any way which would directly or indirectly create, test, train or improve any AI System (including any Machine Learning Tool).

### Support

33. The Department does not undertake to provide technical or other support with respect to the NABERS API but will use reasonable efforts to:
  - (a) maintain the NABERS API and ensure ongoing access to it in accordance with this Agreement;
  - (b) provide assistance resolving technical issues with the NABERS API (which may be emailed to [nabers@dcceew.nsw.gov.au](mailto:nabers@dcceew.nsw.gov.au)); and
  - (c) provide a reasonable amount of notice of any changes to the NABERS API structure or delivery method.

### Intellectual Property

34. All intellectual property rights in the NABERS API, the NABERS Algorithms and any Materials will remain vested in the Department or, to the extent applicable, its third party suppliers.
35. The Department grants you a worldwide, non-exclusive, non-transferable, royalty-free, limited licence to access and use the NABERS API and Materials during the Term in accordance with this Agreement and any other technical requirements notified by the Department. You may not copy, reproduce, develop, modify, reverse engineer, disassemble, decompile, transmit or share with a third party the NABERS API or Materials except as expressly permitted

in accordance with this Agreement.

36. Subject to the rights to use the Logos set out in clause 37, you cannot use the NABERS trade mark, or similar, in your software or system and the reporting of the estimated rating using the NABERS API (you can refer to “estimated NABERS rating of x stars” or something similar, but cannot use the trade mark). In addition to the requirements set out in clauses 42, 43 and 44, you must explicitly state in marketing and reporting that this use of NABERS by you is in no way an endorsement of your product or company by the Department or any agency administering the NABERS scheme.
37. The Department grants you the non-exclusive right, at no additional cost, to use the Department’s logos for the NABERS API set out at Schedule A (the **Logos**) during the Term and on such other terms and conditions, and to such specifications, as the Department may impose from time to time.

### **Confidentiality, Data & Privacy**

38. You must keep the Materials issued to you confidential and you are not permitted to transfer or share access to the NABERS API to, or share the Materials with, any third party, or allow any third party to use the NABERS API or share the Materials, or sub-license any of your rights under this Agreement, without the express written consent of the Department.
39. You must comply with all Privacy Laws and any other applicable privacy laws and data protection laws as may be in force from time to time in connection with your use of the NABERS API.
40. The Department’s Privacy Statement applies to any personal information collected by the Department from users of the NABERS API and you must allow the Department to track the usage and reach of data that is supplied by you via the NABERS API in accordance with the Privacy Statement.
41. You consent to the Department disclosing or otherwise dealing with any data, Personal Information or other information more generally collected under this Agreement (including through the API User’s use of the NABERS API) for the purposes of administering the NABERS program, reporting on the NABERS program, statistical and accounting purposes and otherwise performing the Department’s 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. The API User may obtain details of any Personal Information about the API User that the Department holds by contacting the Department.

### **Marketing, publication and reporting**

42. You acknowledge and agree that any resulting rating generated using the NABERS API is an estimate only and is not a substitute for an accredited NABERS rating undertaken by an Accredited Assessor. An accredited rating can only be obtained through an Accredited Assessor who follows a strict protocol to undertake the assessment and is certified by NABERS and the Department does not warrant or represent that any outcome produced as a result of the use of the NABERS API is accurate, or will be the same as, or is indicative of the outcome of any official NABERS rating by an Accredited Assessor.
43. You must not in any marketing, publication or reporting material represent that any report or results generated by you using the NABERS API:

- (a) is a NABERS accredited assessment or a substitute for a NABERS accredited assessment; or
  - (b) is endorsed by the Department or NABERS or is an endorsement of your product or company by the Department or NABERS.
44. No licence is granted for the use or reproduction of the NABERS name or any logos or trademarks of the scheme, or those of any agency administering the scheme including in any of your marketing, publication or reporting material except in accordance with clause 37.

### **Limited Liability**

45. All express or implied warranties, guarantees, representations, statements, terms and conditions relating to the NABERS API or this Agreement, not contained in this Agreement, are excluded to the extent permitted by law.
46. If any condition or warranty is implied into this Agreement by law and cannot be excluded, the liability of the Department for breach of the condition or warranty (including for any economic or consequential loss which you may sustain) is limited to one or more of the following at the Department's option:
- (a) in the case of goods: replacement of the goods or the supply of equivalent goods; repair of the goods, payment of the cost of replacing the goods or acquiring equivalent goods; or payment of the cost of having the goods repaired; and
  - (b) in the case of services: supplying the services again; or payment of the cost of having the services supplied again.
47. Subject to clause 46 of this Agreement, the maximum aggregate liability of the Department under or in connection with this Agreement or its subject matter whether in contract, tort (including without limitation negligence), equity, under statute or on any other basis is limited to an amount equal to the Fees paid by you to the Department under this Agreement.
48. Subject to clause 46 of this Agreement, to the fullest extent permitted by law, in no event will the Department or any agency administering the NABERS rating system be liable for any direct, indirect, special, incidental, economic or consequential loss or damage or damages for negligence or any loss of profit, whether arising out of the use or inability to use the NABERS API, or your software or system, any outcome produced by your software or system, the interpretation and implementation of the NABERS Algorithms, or any reliance thereon, or otherwise.
49. You agree to indemnify, defend and hold harmless the Department and its officers, employees, consultants and agents from any and all third-party claims, liability, damages, and costs (including, but not limited to, reasonable lawyers' fees) arising from your use of the NABERS API or your failure to comply with the terms and conditions of this Agreement.

### **Termination**

50. Either party may terminate this Agreement (including, where the Department is the terminating party, your right to use the NABERS API), immediately upon written Notice:
- (a) if the other party breaches any of the provisions of this Agreement which are capable of being remedied and fails to rectify such breach within 14

days of being required in writing to do so by the other party;

- (b) if the other party commits a material breach of this Agreement which is not capable of being remedied within 14 days; or
- (c) where the Department is the terminating party, if an insolvency event occurs in respect of you, an insolvency event being in liquidation or provisional liquidation or under administration, having a controller or receiver or manager appointed to you or any of your property, being unable to pay your debts or otherwise insolvent, entering into a compromise or arrangement with, or assignment for the benefit of, any of your members or creditors, or entering into any other form of insolvency administration.

If the Agreement is terminated by you in accordance with this clause 50, the Department's only obligation to you will be a pro-rata refund of the Fees paid by you under this Agreement. For the avoidance of doubt, if the Department terminates this Agreement under this clause 50, you will not be entitled to recover any or all of the Fees that you have paid to the Department.

- 51. The Department may terminate this Agreement, or your right to use any NABERS API, at any time during the Term without cause, on 28 days written Notice, provided that it refunds on a pro-rata basis the Fees paid by you under this Agreement. For example, if half of the Initial Term remains in respect of the use of a NABERS API, the Department will refund you half of the Fees paid by you for the use of that NABERS API.
- 52. Upon the termination or expiry of this Agreement:
  - (a) your licence to use the NABERS API terminates; and
  - (b) the Department may immediately, without notice or liability to you, terminate your access and / or use of the NABERS API.
- 53. Upon the termination of your licence to use the NABERS API, you must:
  - (a) discontinue any and all use of the NABERS API;
  - (b) not in any way whatsoever attempt to access or use the NABERS API; and
  - (c) immediately cease all use of the Logos.

#### **Miscellaneous**

- 54. **(Notices)**
  - (a) A Notice under this Agreement (including a Renewal Notice) must be in writing and delivered to the address or email address of the recipient party as specified in the Details or as that party otherwise directs. A Notice under this Agreement will be taken to be delivered:
    - (i) if by hand or by registered post, on delivery to the party's address for service and a signature is received as evidence of delivery;
    - (ii) if by post (other than registered post), on the sixth (6th) Business Day after posting; or
    - (iii) if by email, upon receipt by the sender of confirmation of delivery notification from an email server or a written acknowledgement from the recipient).

- (b) Notwithstanding the immediately preceding subclause, if a Notice is delivered or received on a day that is not a Business Day, or is delivered or received later than 5.00 pm (Sydney, New South Wales time), it will be taken to have been given or made at 9.00 am on the next Business Day.
- 55. **(Variation)** No variation to this Agreement is effective unless made in writing and executed by each party.
- 56. **(Survival)** The parties agree that the following clauses of this Agreement will survive termination of this Agreement:
  - (a) *(Intellectual Property)* clause 34 to 37 (inclusive);
  - (b) *(Confidentiality, Data & Privacy)* clause 38 to 41 (inclusive);
  - (c) *(Limited Liability)* clause 45 to 49 (inclusive);
  - (d) *(Jurisdiction)* clause 59; and
  - (e) any other clauses which should, by their nature, survive termination.
- 57. **(Assignment, novation or transfer)**
  - (a) The API User may only assign, novate or transfer this Agreement with the prior written consent of the Department.
  - (b) Nothing in this Agreement restricts or otherwise limits the Department's rights to transfer, assign, novate, dispose of or encumber any of its rights, obligations or interests under this Agreement (**Dealing**). The API User acknowledges that the Department may undertake any Dealing at any time on Notice to the API User. The API User must promptly undertake any action required to effect the required Dealing, including executing any required documentation (on terms acceptable to the Department).
  - (c) The API User acknowledges that:
    - (i) the Department 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.
  - (d) Without limitation, a machinery of government change may include changes to the title, structure, department, function or operations of the Department as a result of the relevant Order.
  - (e) The parties will promptly undertake and execute any action required to comply with each relevant Order.
- 58. **(Applicable law)** This Agreement is governed by and construed under the laws of the State of New South Wales.
- 59. **(Jurisdiction)** 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.

60. **(Third parties)** 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 API User's Representative or the API User's Personnel.
61. **(Pre-contractual negotiation)** 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.
62. **(Further assurance)** 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.
63. **(Waivers)** 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.
64. **(Remedies)** The rights of a party under this Agreement are cumulative and not exclusive of any rights provided by Law.
65. **(Severability)** 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.
66. **(Joint and several liability)** Any obligation to be performed or restriction to be observed under this Agreement by two or more persons binds them jointly and severally.
67. **(Counterparts)** This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one agreement.
68. **(Electronic executions)**
  - (a) Each party consents to this document being signed by electronic signature. Electronic signing of this document by or on behalf of a party indicates that party's intention to be bound.
  - (b) This clause applies regardless of the type of legal entity of the parties. If this document is signed by an individual or individuals on behalf of a legal entity, the individuals signing warrant that they have the authority to sign.
  - (c) 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.

### **Definitions and Interpretation**

69. Capitalised terms in this Agreement have the meaning set out in the Details and otherwise as below, unless the contrary intention appears:

|                                |  |
|--------------------------------|--|
| <b>Additional API</b>          | has the meaning given to that term in clause 23.   |
| <b>Agreement</b>               | means this agreement between the Department and the API User for the API User's use of the NABERS API, including the Details, Background, Agreement Terms, all schedules and any other documents referred to in or attached to this agreement.   |
| <b>AI System</b>               | means a model, or a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.   |
| <b>API Key</b>                 | means the unique identifier issued to the API User to access the NABERS API.   |
| <b>Available Ratings</b>       | has the meaning given to that term in the 'Background' section of this Agreement.  |
| <b>Available Register Data</b> | has the meaning given to that term in the 'Background' section of this Agreement.  |
| <b>Brand Guidelines</b>        | means the NABERS Brand Guidelines for Customers, being the official document published by NABERS that outlines the rules, standards, and requirements for the correct use of NABERS branding, including logos, trademarks, and associated materials, by customers and licensees. These guidelines ensure consistent and compliant representation of the NABERS brand in all communications and marketing activities. |
| <b>Business Day</b>            | means any day which is not a Saturday, Sunday or gazetted public holiday in the State of New South Wales.  |
| <b>Fulfilment</b>              | has the meaning given to that term in clause 4.  |
| <b>GST</b>                     | means any tax levied under the GST Law.  |
| <b>GST Law</b>                 | means the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> .  |
| <b>Law</b>                     | means any requirement of any statute, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise.   |
| <b>Licence Tier</b>            | means, subject to any agreed upgrade in accordance with clause 20, either Low Volume or High Volume as selected as the relevant Licence Tier in the Details or, in the case of a Renewal Period, the relevant Renewal Notice.  |
| <b>Licence Upgrade</b>         | has the meaning given to that term in clause 20.   |
| <b>Machine Learning Tool</b>   | means a type of AI System which builds systems that can learn from data and improve their  |

performance over time without being explicitly programmed.

**Materials**

means:

- (a) the API Key;
- (b) Technical Documentation;
- (c) Brand Guidelines;

and any other information associated with use of the NABERS API that the Department makes available to the API User.

**NABERS**

means the National Australian Built Environment Rating System.

**NABERS Algorithms**

means the NABERS methodology to produce a NABERS result.

**NABERS API**

means the Rating Calculator API or the Rating Register API as selected as the relevant API Product in the Details (or, in the case of a Renewal Period, the relevant Renewal Notice) and includes any Additional API, Licence Upgrade and / or Technical Limit Increase made available to the API User in accordance with this Agreement. If both the Rating Calculator API and the Rating Register API are selected in the Details or a Renewal Notice (as applicable) or an Additional API is made available to the API User in accordance with clause 23, a reference to NABERS API in this Agreement is a reference to each of the Rating Calculator API and the Rating Register API jointly and separately.

**NABERS Terms of Service**

means the NABERS authorised user Terms of Service set out and available at <https://perform.nabers.gov.au/s/terms-of-service>.

**NABERS Website**

means [www.nabers.gov.au](http://www.nabers.gov.au) and subdomains.

**Notice**

means any approvals, consents, instructions, orders, directions, statements, requests and certificates, or other communication one party gives to another party in writing under this Agreement and includes a Renewal Notice.

**Personnel**

means any employee, officer or agent of a party.

**Personal Information**

has the same meaning as in the *Privacy and Personal Information Protection Act 1998* (NSW).

**Privacy Laws**

means:

- (a) the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW);

- (b) any legislation (to the extent that such legislation applies to the Department or the API User from time to time in force in any jurisdiction, affecting privacy or Personal Information, provided that the API User ensures that it complies with the Privacy Laws applicable in New South Wales at all times; and
- (c) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in paragraphs (a) and (b), as amended from time to time.

|   |   |
|---|---|
| <b>Privacy Statement</b>                | means the Department's Privacy Statement available at <a href="https://www.nabers.gov.au/privacy">https://www.nabers.gov.au/privacy</a> .   |
| <b>Rating Calculator API</b>            | has the meaning given to that term in the 'Background' section of this Agreement.   |
| <b>Rating Register API</b>              | has the meaning given to that term in the 'Background' section of this Agreement.   |
| <b>Renewal Notice</b>                   | means a renewal notice in the form set out in Schedule B, which may be updated from time to time by the Department by written notice (and does not require a formal variation in accordance with clause 55).  |
| <b>Renewal Period</b>                   | means a period of 12 months from either the expiry of (as applicable): <ul style="list-style-type: none"><li>(a) the Initial Term; or</li><li>(b) an immediately preceding Renewal Period.</li></ul>  |
| <b>Technical Documentation</b>          | means any manuals, guides, specifications, data sheets, user instructions, reference materials provided to the API User by the Department that describe the functionality, operation, use, integration or technical requirements of the NABERS API. |
| <b>Technical Request Limits</b>         | has the meaning given to that term in clause 28.  |
| <b>Technical Request Limit Increase</b> | has the meaning given to that term in clause 29   |
| <b>Term</b>                             | means the Initial Term of this Agreement and any Renewal Period agreed by the Department in accordance with clause 15, unless this Agreement is terminated earlier, in which case the Term ends on the date of termination of this Agreement.       |

## Executed as an Agreement

### BY DEPARTMENT

**Signed for and on behalf of the Crown in right of the State of New South Wales acting through the NSW Department of Climate Change, Energy, the Environment and Water** by its authorised signatory but not so as to incur personal liability:

|  |   |
|--|---|
| <hr/> <p>Signature of Authorised Signatory<br/><b>Strike through if <u>not</u> signed electronically**</b> I acknowledge this Agreement has been electronically signed by me, the Authorised Signatory named below, affixed at the time and on the date specified below.</p> | <hr/> <p>Signature of Witness<br/><b>Strike through if <u>not</u> signed electronically**</b> I acknowledge this Agreement has been electronically signed by me, the Witness named below named below, affixed at the time and on the date specified below.</p>  |
| <hr/> <p>Name of Authorised Signatory</p>  | <hr/> <p>Name of Witness</p>  |
| <hr/> <p>Position of Authorised Signatory</p>  | <hr/> <p>Address of Witness</p>   |
| <hr/> <p>Date and time</p>   | <hr/> <p>Date and time<br/><b>Strike through if <u>not</u> witnessing over audio visual link**</b>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).</p> |

**BY API USER**

**\*\* API User to execute using relevant execution block. Those execution blocks not used are not applicable.**

**\*\* Use this if signing on behalf of a company with more than one director or a director and secretary**

**Executed by**

in accordance with section 127 of the *Corporations Act 2001* by:

|  |   |
|--|---|
| <p style="text-align: center;">Signature of Director<br/><i>Strike through if <u>not</u> signed electronically** I acknowledge this Agreement has been electronically signed by me, the Director named below, affixed at the time and on the date specified below.</i></p> | <p style="text-align: center;">Signature of Director/Company Secretary<br/><i>Strike through if <u>not</u> signed electronically** I acknowledge this Agreement has been electronically signed by me, the Director or Company Secretary named below named below, affixed at the time and on the date specified below.</i></p> |
| <p style="text-align: center;">Name of Director</p>  | <p style="text-align: center;">Name of Director/Company Secretary</p>   |
| <p style="text-align: center;">Date and time</p>   | <p style="text-align: center;">Date and time</p>  |

**\*\* Use this if signing on behalf of a company with a sole director**

**Executed by**

in accordance with section 127 of the *Corporations Act 2001* by:

|  |
|--|
| <p style="text-align: center;">Signature of Sole Director<br/><i>Strike through if <u>not</u> signed electronically** I acknowledge this Agreement has been electronically signed by me, the Sole Director named below, affixed at the time and on the date specified below.</i></p> |
| <p style="text-align: center;">Name of Sole Director</p>   |
| <p style="text-align: center;">Date and time</p>   |

**\*\* Use this if signing as an individual**

**Executed by**

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Signature of Individual

**Strike through if not signed electronically\*\*** I acknowledge this Agreement has been electronically signed by me, the individual named below, affixed at the time and on the date specified below.

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Signature of Witness

**Strike through if not signed electronically\*\*** I acknowledge this Agreement has been electronically signed by me, the Witness named below named below, affixed at the time and on the date specified below.

---

Name of Individual

---

Name of Witness

---

Address of Individual

---

Address of Witness

---

Date and time

---

Date and time

**Strike through if not witnessing over audio visual link\*\***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).

Terms and Conditions of Use \* **Use this if signing as an authorised representative**

By entering into this Agreement the signatory warrants that the signatory is duly authorised to execute this Agreement on behalf of

**Signed** for and on behalf of

by its authorised signatory:

|  |   |
|--|---|
| <hr/> <p>Signature of Authorised Signatory<br/><b>Strike through if <u>not</u> signed electronically**</b> I acknowledge this Agreement has been electronically signed by me, the Authorised Signatory named below, affixed at the time and on the date specified below.</p> | <hr/> <p>Signature of Witness<br/><b>Strike through if <u>not</u> signed electronically**</b> I acknowledge this Agreement has been electronically signed by me, the Witness named below named below, affixed at the time and on the date specified below.</p>  |
| <hr/> <p>Name of Authorised Signatory</p>  | <hr/> <p>Name of Witness</p>  |
| <hr/> <p>Position of Authorised Signatory</p>  | <hr/> <p>Address of Witness</p>   |
| <hr/> <p>Date and time</p>   | <hr/> <p>Date and time<br/><b>Strike through if <u>not</u> witnessing over audio visual link**</b>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).</p> |

**\*\* Use this if signing as an authorised representative under power of attorney**

By entering into this Agreement the signatory warrants that the signatory is duly authorised to execute this Agreement on behalf of

**Signed** for and on behalf of  
by its authorised attorney under power of attorney dated  
and if registered

|  |   |
|--|---|
| <p>Signature of Authorised Attorney<br/><b>Strike through if <u>not</u> signed electronically**</b> I acknowledge this Agreement has been electronically signed by me, the Authorised Attorney named below, affixed at the time and on the date specified below.</p> | <p>Signature of Witness<br/><b>Strike through if <u>not</u> signed electronically**</b> I acknowledge this Agreement has been electronically signed by me, the Witness named below named below, affixed at the time and on the date specified below.</p>  |
| <p>Name of Authorised Attorney</p>   | <p>Name of Witness</p>  |
| <p>Position of Authorised Attorney</p>   | <p>Address of Witness</p>   |
| <p>Date and time</p>   | <p>Date and time<br/><b>Strike through if <u>not</u> witnessing over audio visual link**</b>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).</p> |

**SCHEDULE  
A – LOGOS**



## SCHEDULE B – FORM OF RENEWAL NOTICE

To: The Crown in right of the State of New South Wales acting through the NSW Department of Climate Change, Energy, the Environment and Water, as the entity responsible for administering, managing and developing the NABERS national government program (ABN 27 578 976 844) (the **Department**)

From: *[insert]* (the **API User**)

Date: *[insert]*

### **NABERS API Terms and Conditions of Use – dated *[insert]* between the API User and the Department (the Agreement)**

This is a Renewal Notice for the purposes of the Agreement.

Terms used but not defined in this Renewal Notice have the meaning given to them in the Agreement.

#### 1 Extension of Term

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- (a) The API User submits this Renewal Notice to extend the Term of the Agreement for further a Renewal Period in accordance with the Agreement and the requested terms set out in this Renewal Notice.
- (b) The API User acknowledges and agrees that the extension of the Term of the Agreement is subject to the Department's agreement (in its sole discretion) in accordance with clause 15 of the Agreement.

#### 2 NABERS API and Licence Tier

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The API User requests the following licence to use the NABERS API for the Renewal Period:

|                               |  |
|-------------------------------|--|
| <b>NABERS API<br/>product</b> | <input type="checkbox"/> Rating Calculator API<br><input type="checkbox"/> Rating Register API<br><br>Note: Details on: <ul style="list-style-type: none"><li>- the rating products covered by the Rating Calculator API are as specified on the NABERS Website at <a href="https://www.nabers.gov.au/ratings/pricing">https://www.nabers.gov.au/ratings/pricing</a>; and</li><li>- the data available through the Rating register API is as specified at <a href="https://www.nabers.gov.au/ratings/pricing">https://www.nabers.gov.au/ratings/pricing</a>, each of which may be subject to change from time to time in accordance with clause 27(c) and 27(d) of the Agreement respectively.</li></ul> |
|-------------------------------|--|

**Licence Tier  
(Rating Calculator  
API only)**

- Low Volume  
 High Volume

Note: The Licence Tier is only applicable to the Rating Calculator API. If only the Rating Register is selected above, no selection is required here.

Note: The usage limits applicable to each Licence Tier are as specified on the NABERS Website at <https://www.nabers.gov.au/ratings/pricing> and otherwise as applicable in accordance with clause 19 of the Agreement.

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### 3 Other matters

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The API User:

- (a) warrants to the Department that as of the date of this Renewal Notice no breach of the Agreement by the Recipient is continuing; and
- (b) acknowledges and agrees that:
  - (1) subject to any change to the API User's relevant NABERS API and Licence Tier specified in this Renewal Notice, any Renewal Period agreed by the Department in accordance with clause 15 of the Agreement will be on the same terms and conditions of the Agreement as in effect at the end of the current Term and the API User agrees that it will continue to be bound by those terms for the Renewal Period; and
  - (2) the Department may suspend its access to the NABERS API if payment of the relevant Fees for the Renewal Period are not received by the Department from it before commencement of the relevant Renewal Period.

**Signed** for and on behalf of [Click here to enter Company/Organisation name](#) by its authorised signatory:

---

Signature of Authorised Signatory

**Strike through if not signed electronically\*\*** I acknowledge this document has been electronically signed by me, the Authorised Signatory named below, affixed at the time and on the date specified below.

---

Signature of Witness

**Strike through if not signed electronically\*\*** I acknowledge this document has been electronically signed by me, the Witness named below named below, affixed at the time and on the date specified below.

---

Name of Authorised Signatory

---

Name of Witness

---

Position of Authorised Signatory

---

Address of Witness

---

---

Date and time

---

---

Date and time

**~~Strike through if not witnessing over audio visual link~~**<sup>\*\*</sup>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).