
NABERS Commitment Agreement

Version 2.1 – January 2022

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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PROJECT DETAILS

PROJECT DETAILS	
Project Name	
Project address (number, street, suburb and postcode)	
Project type	
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 	
Space Type and Rating Scope	
Rating Tool	
Target Rating (For Office Base Buildings, the minimum target rating is 5 stars and the minimum for using NCC JV1 is 5.5 stars.)	
Planned Occupancy Permit Date Note: Can be updated later if needed.	
Planned Performance Rating Date (Planned Data Collection Start Date plus 16 months.) Note: Can be updated later if needed.	
Expected date of Independent Design Review Report (Should be within 12 months of signing this contract and must be before a Construction Certificate or building permit is granted.) Note: Can be updated later on agreement from the NABERS National Administrator if needed.	
Independent Design Reviewer (if known)	
Intended use/s of the Commitment Agreement	
Has construction on this project started?	

APPLICANT DETAILS	
Business name	
ABN/ACN	
Postal Address	
The Applicant is a Trustee company and wishes to benefit from Schedule 3 (Select "Not Applicable" if the Applicant is not a Trustee company)	
Name of Applicant's contact	
Applicant's email address	
Applicant's position	
REPRESENTATIVE DETAILS (only to be completed if the Applicant wishes to appoint an external representative to act on its behalf – see clause 24.5)	
Business name of Representative	
Name of Representative's contact	
Representative's position	
Representative's role in project	
Representative's 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>Rules version number</i>	
<i>Handbook for estimating NABERS ratings version number</i>	V2.0
<i>Agreement Date</i>	
<i>Planned Data Collection Start Date</i> (this date should be 3 months after the Planned Occupancy Permit Date, but can be updated later due to e.g. low occupancy if needed)	
<i>Validity of NGA Emissions Factors used in relevant rating algorithm</i>	Until 2025

BACKGROUND

- A. NABERS is a government-backed program, administered by the National Administrator, which aims to stimulate market recognition and demand for buildings with improved greenhouse performance. It allows building owners, managers and tenants to understand the greenhouse impact of their buildings.
- B. The National Administrator has developed agreements which may be entered into by property owners and developers to encourage such owners and developers to design and construct buildings to yield positive greenhouse performance once completed (**Commitment Agreements**).
- C. Commitment Agreements are available for new or refurbished buildings for the following Rating Tools: office energy, shopping centre energy, hotel energy, data centre energy, apartment building energy, residential aged care and retirement living energy. No Greenpower can be used when calculating an Estimate for a rating.
- D. This Agreement qualifies as a Commitment Agreement. It establishes the process that the Applicant is required to follow to obtain Design Reviewed Target Rating. This Agreement also sets out the basis on which the Applicant may promote its Target Rating and Design Reviewed Target Rating and use the Trade Marks.
- E. The Applicant agrees to engage as soon as practical and within eight months of signing the Agreement, an Estimator to obtain the Estimate Report and a member of the Independent Design Review Panel to conduct a review of their energy model and related documentation.
- F. The parties intend that ideally before, but if not following the Occupancy Permit Date, the Applicant will appoint an Independent Accredited Assessor to obtain a Certified Performance Rating which, once awarded, will replace the Design Reviewed Target Rating.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 DEFINITIONS

Meanings shall apply to capitalised terms used in this Agreement as specified in this provision, unless the context otherwise requires:

Accredited Assessor	An Independent person authorised by the National Administrator to assess and lodge an application for a Certified Performance Rating with the National Administrator in accordance with the Rules and applicable process.
Agreement	This agreement, including all schedules and any policies, guidelines and other documents referred to in this agreement.
Agreement Date	The date of signature by the National Administrator of this Agreement.
Agreement Fee	The fee payable to the National Administrator to obtain a signed Commitment Agreement as specified by the National Administrator on the Website as at the Agreement Date.
Applicant	The entity identified in the Project Detail Form.
Authority	Any governmental, statutory, public, local government or other authority or body having jurisdiction.

Brand Guidelines	The NABERS brand guidelines for customers as displayed on the Website.
Building Permit	A document issued by the relevant consent Authority which certifies that the building work can proceed in accordance with the approved plans and applicable Laws.
Building Permit Date	<p>In relation to new projects and refurbishments to which a development consent from any relevant consent Authority applies: Date on which the Project in its entirety obtains a Building Permit.</p> <p>In relation to any other Project or refurbishment which does not require a development consent from any relevant consent Authority: the date on which building or refurbishment works commence.</p>
Business Day	A day which is not Saturday, Sunday or a public holiday in Sydney.
Certified Performance Rating	A rating of zero to six stars that may be awarded by the National Administrator, having assessed the actual operational performance of a Space Type following the collection of data starting from the Data Collection Start Date.
Confidential Information	Any non-public information relating to the operations, affairs or business of either party to this Agreement which is provided by or on behalf of a party to the other party to this Agreement or of which either party becomes aware pursuant to this Agreement.
Data Collection Start Date	The date on which relevant data starts being collected for the purposes of obtaining a Certified Performance Rating for the Project.
Design Reviewed Target Rating	A rating of four to six stars, reflecting the estimated operational performance of a Space Type that may be awarded by the National Administrator following an Independent Design Review report.
Design Reviewed Target Rating Certificate	A certificate awarded to the Applicant by the National Administrator to confirm the Design Reviewed Target Rating that has been obtained for the Project.
Design Reviewed Target Rating Licence Period	The period during which the Applicant may exercise the Design Reviewed Target Rating Rights as set out in Schedule 1.
Design Reviewed Target Rating Rights	The rights that may be exercised by the Applicant once it obtains a Design Reviewed Target Rating as set out in Schedule 1.
Estimate Report	The report which sets out a realistic estimate of the operational performance of the Project, arranged and paid for by the Applicant, in accordance with Section 4 of the Handbook - <i>Report Requirements for Estimators</i> .
Estimator	The person who undertakes the Estimate Report.
GST	Any tax levied under the GST Law.
GST Law	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Handbook	The <i>Handbook for estimating NABERS Ratings</i> , which is available for download from the Website.

Independent	<p>The Reviewer or Accredited Assessor (as the case may be) does not and has not had:</p> <ul style="list-style-type: none"> • any direct or indirect involvement with the design, construction or commissioning of the Project; nor • any direct or indirect interest (pecuniary or otherwise) in any part of the Project; nor • any direct or indirect involvement in any capacity with the Applicant.
Independent Design Review	An independent design assessment of the Project prior to the Building Permit Date against applicable criteria in the Handbook.
Independent Design Review Report	The report prepared in respect of the Independent Design Review, in accordance with Section 5 of the Handbook – <i>Report requirements for Reviewers</i> .
Law	Includes any requirement of any statute, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise.
Marketing Materials	All marketing, promotional and advertising materials relating to the Project created by or on behalf of the Applicant, its agents or contractors including website and social media posts.
NABERS	The National Australian Built Environment Rating System.
NABERS IP	The Rating Tool, Handbook, the National Administrator's Confidential Information and the Trade Marks and any other intellectual property owned by the National Administrator in relation to NABERS.
National Administrator	The entity responsible for administering, managing and developing the NABERS national government program, being as at the Agreement Date the NSW Department of Planning and Environment, acting for and on behalf of the State of New South Wales.
National Greenhouse Accounts Factors	The factors used to estimate greenhouse gas emissions, as updated from time to time on the website of the Department of Industry, Science, Energy and Resources.
Occupancy Permit	A document issued by the relevant consent Authority which certifies that the building work has been completed in accordance with the approved plans and applicable Laws and certifies that the building is suitable for occupation.
Occupancy Permit Date	<p>In relation to new projects and refurbishments to which a development consent from any relevant consent authority applies: the date on which the Project in its entirety obtains an Occupancy Permit.</p> <p>In relation to any other project which does not require a development consent from any relevant consent Authority: the date on which all building work is fully complete.</p>
Project	The project described in the Project Detail Form.
Planned Performance Rating Date	The date on which a rating is expected to be lodged to obtain a Certified Performance Rating for the project. This date is usually within 12 - 18 months of the Occupancy Permit Date.

Rating Scope	<p>For offices: base building, whole building or tenancy and associated rating coverage according to the Rules.</p> <p>For data centres: whole centre, infrastructure or IT equipment and associated rating coverage according to the Rules.</p> <p>For apartment buildings, shopping centres or hotels: rating coverage according to the relevant Rules.</p> <p>For residential aged care and retirement living: rating coverage according to the relevant Rules.</p>
Rating Tool	<p>The NABERS rating tools that may be used for the purposes of a Target Rating or Design Reviewed Target Rating being as at the Agreement Date:</p> <ul style="list-style-type: none"> - office energy - shopping centre energy - hotel energy - data centre energy - Apartment building energy - Residential aged care and retirement living energy.
Representative	The entity (if any) nominated by the Applicant as its representative, specified in the Project Detail Form.
Reviewer	The person who undertakes the Independent Design Review and writes 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	A category of building, or part of a building, which is able to have its operational energy performance assessed through a NABERS rating. Space types include offices, hotels, shopping centres, data centres, apartment buildings, residential aged care and retirement living.
Status	<p>The official status of this Agreement from time to time as determined by the National Administrator from time to time.</p> <p>The possible status identifiers are set out in Schedule 1.</p>
Target Rating	An initial rating of four to six stars estimating the likely Design Reviewed Target Rating for the Project (as entered in the Project Detail Form).
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	Those rights that may be exercised by the Applicant once it has paid the Agreement Fee as set out in Schedule 1.
Trade Marks	The trade mark(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 and pending registration at the Agreement Date (including trade marks 1106420 and 1959846).
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 shall 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 successors and permitted assigns and substitutes by way of novation;
- e) (amendments): any reference to any agreement or document includes that agreement or document as amended at any time;
- f) (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;
- g) (references): any reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this Agreement;
- h) (specifics): the use of the word “including” is without limitation; and
- i) (trustee company): To the extent that the Applicant is a trustee company, it 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 Detail Form.

2. PAYMENT

2.1 PAYMENT TERMS

- a. In consideration of the licences granted to the Applicant under this Agreement, the Applicant must pay the Agreement Fee to the National Administrator within 30 days of receipt of an invoice from the National Administrator.
- b. The National Administrator may invoice the Applicant for the Agreement Fee on or at any time after the 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 (including all subcontractors, the Estimator, the Reviewer and the Accredited Assessor) in performing its obligations under this Agreement.

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

Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

- a. Unless otherwise specified, all amounts payable under this deed are exclusive of GST.
- b. 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.
- c. 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.

- d. If there is an adjustment to a taxable supply made under this deed, then the Supplier must provide an adjustment note to the Recipient.
- e. 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

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. From the Agreement Date and for the Target Rating Licence Period, provided that the Agreement Fee has been paid by the Applicant in full, the Applicant may exercise the Target Rating Rights.
- b. Subject to clauses 5 and 10 below, the Target Rating for the Project may be changed during the Target Rating Licence Period only by agreement between the parties in writing.
- c. The Applicant must have reasonable grounds for nominating the Target Rating specified on the Project Detail Form, and must nominate the Target Rating having regard to:
 - a. the likelihood that the Project will achieve the same (or higher) Design Reviewed Target Rating; and
 - b. the applicable requirements set out in the Handbook.

5. ESTIMATE REPORT

- a. The Applicant must as soon as practical following the Agreement Date:
 - i. appoint an Estimator to prepare an Estimate Report for the Project;
 - ii. ensure the Estimator is suitably qualified and experienced to conduct this work, having regard to the recommendations specified in the Handbook in respect of the skills that should be considered.
- b. Once the Estimate Report has been provided by the Estimator, the Applicant must notify the National Administrator if the Estimator determines that the Target Rating nominated by the Applicant is inappropriate, inaccurate or unjustifiable on reasonable grounds.
- c. If the Estimate Report indicates that the Target Rating given to the Project is inappropriate, inaccurate or unjustifiable on reasonable grounds, the National Administrator may unilaterally (acting reasonably) replace the Target Rating with a revised Target Rating that accurately reflects the Estimate Report by giving the Applicant notice in writing.
- d. An estimated NABERS rating is always a rating calculated without Greenpower or other offsite renewable energy.

6. INDEPENDENT DESIGN REVIEW

- a. After the Applicant has obtained the Estimate Report, the Applicant must:
 - i. appoint a Reviewer to conduct an Independent Design Review and prepare an Independent Design Review Report for the Project. The Reviewer appointed must be:

1. independent; and
 2. knowledgeable and experienced in the building energy simulation software used by the Estimator for the Estimate of the Project; and
 3. included in the NABERS Independent Design Review Panel Members list (provided on the Website) at the Agreement Date or the date of appointment; and
- ii. provide the Reviewer with all relevant information and documentation specified in the Handbook and reasonably requested by the Reviewer to complete the Independent Design Review, including the Estimate Report and all Project design documentation; and
 - iii. use reasonable endeavours to ensure that the Reviewer produces an Independent Design Review Report before the Building Permit Date
- b. The Applicant must provide a copy of the Independent Design Review Report to the National Administrator promptly after it is received by the Applicant and in any event before the Building Permit Date.

7. DESIGN REVIEWED TARGET RATING

- a. After receiving the Independent Design Review Report and provided that the Applicant has complied with all of its obligations under this Agreement (to that point), the National Administrator may award the Applicant a Design Reviewed Target Rating.
- b. The National Administrator reserves the right in its discretion to review, request changes and/or reject an Independent Design Review Report or decide not to award a Design Reviewed Target Rating, and in doing so must act reasonably.
- c. If the National Administrator queries or requests changes to the Independent Design Review Report, the Applicant must engage with Reviewer to rectify the queries and/or make the requested changes and re-submit the revised report to the National Administrator.
- d. If the Applicant obtains a Design Reviewed Target Rating from the National Administrator to the Project:
 - i. the rating will be determined by the National Administrator based on the results of and information contained in the Independent Design Review Report;
 - ii. the Applicant may exercise the Design Reviewed Target Rating Rights for the Design Reviewed Target Rating Licence Period; and
 - iii. the National Administrator will provide the Applicant with a Design Reviewed Target Rating Certificate.
- e. If a Design Reviewed Target Rating is not awarded by the National Administrator, the National Administrator may terminate this Agreement 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, the Applicant must use reasonable endeavours to:
 - i. construct the Project in accordance with all design and construction specifications and other information that was provided to the Reviewer; and

- ii. use the materials that were nominated for use in connection with the Project for the purposes of the Independent Design Review Report

In each case, where the use or implementation of such specifications and/or materials has the potential to impact the achievement of a Certified Performance Rating that is at least equal to the Design Reviewed Target Rating.

- b. In fulfilling its obligation in clause 8(a), 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. 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 any significant changes to the design specifications, construction specifications or other information provided to the Reviewer which has the potential to impact the achievement of a Certified Performance Rating that is at least equal to the Design Reviewed Target Rating, the Applicant must:
 - i. arrange for the Estimate Report to be updated accordingly;
 - 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 update the Independent Design Review Report accordingly; 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 National Administrator may unilaterally (acting reasonably):
 - 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. following consultation with the Applicant and having given the Applicant reasonable opportunity to address the National Administrator's concerns, terminate this Agreement by giving the Applicant at least 7 days' written notice if it does not believe that the Project (as revised) qualifies for a Design Reviewed Target Rating.

9. CERTIFIED PERFORMANCE RATINGS

- a. The Applicant must notify the National Administrator if the actual Data Collection Start Date or Occupancy Permit Date differs from the Planned Data Collection Start Date or Planned Occupancy Permit Date (as the case may be) as detailed in the Project Detail Form.
- b. The Applicant must arrange and pay for an Independent Accredited Assessor to conduct, lodge and obtain a Certified Performance Rating for the Project. The Applicant should inform the Accredited Assessor that a Commitment Agreement

is in place so that Commitment Agreement option is checked when lodging the Certified Performance Rating.

- c. The Data Collection Start Date for the Certified Performance Rating for the Project must occur by the date identified for the applicable Space Type and Rating Tool in Schedule 2.
- d. The Applicant must comply with all applicable Rules relating to data collection for the Certified Performance Rating and the Certified Performance Rating application process. Further, the process of awarding a Certified Performance Rating and the rights that the applicant enjoys after it is awarded a Certified Performance Rating are governed by separate terms and conditions.
- e. The Applicant must notify the National Administrator when the Certified Performance Rating has been obtained.
- f. 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.
- g. Subject to paragraphs 9(h) and 9(j), once a Certified Performance Rating is obtained, the National Administrator may update the final Status of the Agreement on the Website.
- h. 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 request that the National Administrator delays publication of the final Status for a period of up to 16 months by completing and returning the form in Schedule 4 (Request), and the following provisions will apply:
 - i. If the Request is approved by the National Administrator, the Project may maintain the Status of the Commitment Agreement for the Project as “In Progress (Design Reviewed Target Rating)” for up to another 16 months after the date the first Certified Performance Rating is awarded to the Applicant;
 - ii. The Request must be submitted to the National Administrator for consideration before the date that is 10 Business Days after the first Certified Performance Rating has been awarded to the Project.
 - iii. The Request does not alter or vary the Design Reviewed Target Rating Licence Period for the Project.
- i. The following provisions apply if the Request under clause 9(h) is approved by the National Administrator:
 - i. The Applicant must arrange and pay for an Independent Accredited Assessor to conduct, lodge and obtain a second Certified Performance Rating for the Project.
 - ii. 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.
 - iii. 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.
 - iv. The Applicant must notify the National Administrator in writing when the second Certified Performance Rating has been obtained.
- j. 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 Schedule 5 and supporting evidence to the National Administrator for consideration.

- i. The Applicant's request must be submitted to the National Administrator for consideration before the date that is 28 months after the Project's Occupancy Permit Date.
- ii. The National Administrator will assess the Schedule 5 request and respond to the Applicant as soon as possible but no later than 15 business days;
- iii. If the request is approved by the National Administrator, the Status of the Commitment Agreement can be listed as 'Achieved' on the Website.
- iv. If the request is not approved by the National Administrator, reasons for this decision will be conveyed to the Applicant within 15 business days.

10. RECORDS OF PROJECT

- a. The Applicant must maintain and keep in good condition records and documents relating to the Project that are relevant to this Agreement **(Records)** 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;
 - iv. and any other information relevant to the Target Rating and/or Design Reviewed Target Rating.
- b. The National Administrator acting reasonably may request copies of the Records and the Applicant must provide the Records on request.
- c. 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 National Administrator may unilaterally:
 - i. require the Applicant to obtain a further Independent Design Review Report by notice in writing, whereby the Applicant must obtain a further Independent Design Review Report (in accordance with the provisions of clause (6) and provide it to the National Administrator as soon as it is available;
 - 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 by giving the Applicant notice in writing; or
 - iii. following consultation with the Applicant and having given the Applicant reasonable opportunity to address the National Administrator's concerns, terminate this Agreement if it does not believe that the Project qualifies for a Target Rating or Design Reviewed Target Rating by giving the Applicant seven days' written notice.

11. TARGET RATING RIGHTS AND DESIGN REVIEWED TARGET RATING RIGHTS

- a. The Applicant must exercise its Target Rating Rights and Design Reviewed Target Rating Rights (if any) in accordance with this clause 11 and all other provisions of this Agreement.
- b. The Applicant must adhere to and comply with the Brand Guidelines at all times.
- c. The Applicant acknowledges and agrees that its rights to use the Trade Marks as specified in Schedule 1 are non-exclusive, non-assignable (unless this Agreement is novated in accordance with clause 17 and, subject to paragraph (g) below, non-sublicensable).
- d. The Applicant may only use the Trade Marks as permitted by Schedule 1 and at all times 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).
- e. The Applicant's use of the Target Rating, Design Reviewed Target Rating, Trade Marks and the Design Reviewed Target Rating Certificate must not and none of the Marketing Materials may:
 - i. imply or infer that the Applicant or the Project is officially associated with NABERS, administers NABERS, owns the Trade Marks or is endorsed by the National Administrator or NABERS (beyond the endorsement given by way of the Target Rating or Design Reviewed Target Rating);
 - ii. be false, 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:
 - 1. the Applicant or the Project has been awarded a Certified Performance Rating for the Project;
 - 2. the Project is guaranteed to be energy efficient once completed; and/or
 - 3. the Design Reviewed Target Rating or any other NABERS award or accreditation given to the Project has been achieved in operation;
- f. 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; nor
 - iv. permit the Trade Marks to be crowded by other visual material including, but not limited to, borders and other typographic or graphic devices.
- g. The Applicant may authorise the use of the Trade Marks by 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. For the avoidance of doubt, sublicenses under this paragraph (g) may not be given under any circumstances to subcontractors or

consultants involved in the design or construction of the Project (including suppliers of materials for the project).

- h. For the avoidance of doubt, the Applicant may not use the Trade Marks in any context or for any purpose:
 - i. if it has not obtained a Target Rating or a Design Reviewed Target Rating; or
 - ii. 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.

12. MARKETING MATERIALS

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:

- a. be structurally sound or safe;
- b. be constructed in accordance with applicable Laws, regulations or codes; or
- c. once constructed, achieve a relative or specified level of carbon or energy efficiency, performance, or use of renewable, recycled or recyclable resources.

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,

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).

- b. Where clause E.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).
- c. 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 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 uses set forth 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 shall apply to 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 shall not be exclusive of any other remedies available to the National Administrator, nor shall it be 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 expressly authorised to do by the National Administrator or otherwise in accordance with this Agreement.

15. PUBLICITY RIGHTS

- a. On and from the Agreement Date without limit in time (including beyond expiry or termination of this Agreement), 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 Detail Form;
 - ii. the applicable Status of this Agreement
 - iii. the Target Rating, Design Reviewed Target Rating and Certified Performance Rating for the Project.
- b. the National Administrator agrees that it will use all reasonable endeavours to update the Status of the Project on the Website every month.

16. APPLICANT WARRANTIES, ACKNOWLEDGEMENTS AND INDEMNITIES

16.1 WARRANTIES AND UNDERTAKINGS

- a. The Applicant warrants and undertakes that:

- i. it shall 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;
 - ii. 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;
 - iii. it has the authority of all relevant persons to enter into this Agreement; and
 - iv. it has control of the Project and is authorised and able to perform all the obligations under this Agreement;
 - v. 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
 - vi. it will comply at all times with all applicable Laws in exercising its rights under this Agreement.
- 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.

16.2 ACKNOWLEDGEMENT

- a. The Applicant acknowledges that Commitment Agreements, while regulated by specific rules developed by the National Administrator, also require discretion and judgment on the part of the National Administrator. 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.
- b. The Applicant agrees that in no event shall the National Administrator have any liability if it decides not to grant a Design Reviewed Target Rating to the Project (or any portion of the Project) for any reason.

16.3 RELEASE AND INDEMNITY

- a. The Applicant indemnifies the National Administrator and the Crown in right of NSW (for so long as the Department of Planning and Environment is the National Administrator) (**Indemnified Parties**) and will keep them indemnified from and against any claims, suits, liabilities, losses, damages, fines, costs, settlement payments or expenses (including legal expenses) incurred by the Indemnified Parties arising out of:
 - i. a breach of this Agreement by the Applicant; or
 - ii. any matter concerning a breach or alleged breach of the Australian Consumer Law by the Applicant, its agents or contractors,
 but only to the extent that any such claims, suits, liabilities, losses, damages, fines, costs settlement payments or expenses were not caused by the National Administrator.

- b. The Applicant releases the Indemnified Parties from all claims and suits related to or arising from the Applicant's participation in the NABERS program, the Applicant's estimation of a Target Rating and/or application for a Design Reviewed Target Rating and the Applicant's use of, or reliance on, the Rating Tool, the Handbook and the Trade Marks.

16.4 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.

16.5 SURVIVAL OF RELEASES AND INDEMNITY

This clause 16 shall continue to apply after the expiry or termination of this Agreement.

17. TRANSFER OF RIGHTS IN THE PROJECT

- a. If the Applicant wishes to sell, transfer or otherwise dispose of its rights in relation to the Project including the Project property (**Project Rights**), the Applicant must:
 - i. notify the National Administrator in writing of any contracts, deeds or other agreements entered into in respect of the sale, transfer or disposal (**Dealing**); and
 - ii. provide a copy of this Agreement to the proposed purchaser or assignee of the Project Rights (**Purchaser**).
- b. The National Administrator may terminate this Agreement on and from the date of the completion of any Dealing by giving written notice to the Applicant unless:
 - i. the National Administrator, the Applicant and the Purchaser sign a deed of novation on reasonable terms acceptable to the parties; or
 - ii. the National Administrator and the Purchaser enter into a new Commitment Agreement to replace this Agreement (in which case the Applicant and the National Administrator will mutually terminate this Agreement).
- c. the National Administrator may publicise on the Website any novation or termination of this Agreement pursuant to this clause.

18. TERMINATION

18.1 TERMINATION BY THE NATIONAL ADMINISTRATOR

Without prejudice to its termination rights elsewhere in this Agreement, the National Administrator may terminate this Agreement with immediate effect by written notice to the Applicant, if:

- a. the Applicant is in breach of any term of this Agreement and, if that breach is capable of remedy, has not remedied the breach within a reasonable period (having regard to the nature of the breach) after the National Administrator has given written notice requiring it to do so;
- b. the Applicant engages in any conduct in relation to the Target Rating, Design Reviewed Target Rating, Design Reviewed Target Rating Certificate or Trade Marks which in the National Administrator's reasonable opinion is likely to, or does, mislead or deceive (including by omitting relevant facts);
- c. the Applicant breaches the NABERS IP;

- d. the Applicant has not been awarded a Design Reviewed Target Rating or, in the sole opinion of the National Administrator, has delayed the Independent Design Review by any one or more acts or omissions which results in the Independent Design Review Report not being completed by the earlier of:
 - i. the Building Permit Date; or
 - ii. the date that is 3 years from the Agreement Date,
- e. data does not start being collected for the purposes of obtaining a Certified Performance Rating by the date for the applicable Space Type and Rating Tool specified in Schedule 2;
- f. the Occupancy Permit Date for the Project does not occur within six (6) years of the Agreement Date;
- g. to the extent permitted by Law, any of the following events occur by or in relation to the Applicant:
 - i. an administrator is appointed;
 - ii. 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;
 - iii. the Applicant ceases business, or a proposal is put for cessation of the Applicant's business; or
 - iv. 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 *Bankruptcy Act 1966 (Cth)* with his or her creditors.

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 Purchaser does not wish to be bound by this Agreement or enter into a similar agreement with the National Administrator.
- b. 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, the Applicant may terminate this Agreement by written notice to the National Administrator.

18.3 CONSEQUENCES OF TERMINATION

The following provisions shall apply on termination of this Agreement:

- c. Any termination of this Agreement will not prejudice the National Administrator's rights to seek and obtain damages for any breach of this Agreement.
- d. The parties agree that clauses 15, 16, 18.4, 19 and 24 of this Agreement will survive termination of this Agreement.

18.4 APPLICANT'S RESPONSIBILITIES ON TERMINATION

Without prejudice to any other clause of this Agreement, upon termination of this Agreement the Applicant must:

- a. immediately cease any and all use of the Trade Marks;

- b. remove the Design Reviewed Target Rating Certificate (if any) from public display;
- c. cease to promote or otherwise refer to a Commitment Agreement or Target Rating or Design Reviewed Target Rating in connection with the Project; and
- d. 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

- a. Subject to any other provision of this Agreement, neither party may disclose to any third party Confidential Information and will keep confidential all the Confidential Information provided to it.
- b. The National Administrator and the Applicant may disclose 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 parties agree that negotiations relating to this Agreement shall constitute Confidential Information until the Agreement Date.
- d. This clause 19 shall continue to apply after expiry or termination of this Agreement.

20. DUTIES, TAXES, LEVIES & CHARGES

The Applicant shall promptly pay:

- a. 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
- b. 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

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 reasonable requirements of the National Administrator in respect of any such assignment, transfer or novation.

21.2 CHANGE IN NATIONAL ADMINISTRATOR

If the National Administrator ceases to be the NSW Department of Planning and Environment (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:

- a. enter into a deed to vary this Agreement to replace the definition of “National Administrator” with the new national administrator; or
- b. enter into a deed 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.

22. NOTICES

22.1 FORM

Any notice to or by a party under this Agreement shall 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

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 Detail Form.

22.3 CHANGE OF ADDRESS

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 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 Detail Form 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

If there is a Dispute, then within five Business Days of a party notifying the other party in writing of the Dispute, a senior representative from each party must discuss 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 within 20 Business Days of notification under clause 23.1, 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**).
- 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 borne equally by the parties. Each party must pay its own costs of the mediation.
- 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 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

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

23.5 EXCEPTION

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 APPLICABLE LAW

This Agreement shall be governed by and construed under the law of the State of New South Wales.

24.2 JURISDICTION

Any legal action in relation to this Agreement against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.

24.3 SUBMISSION

Each party by execution of this Agreement irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales in relation to both itself and its property.

24.4 THIRD PARTIES

This Agreement shall confer 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.

24.5 APPLICANT'S REPRESENTATIVE

If the Applicant nominates a Representative:

- a. 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;
- b. 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;
- c. The Applicant must notify the National Administrator promptly of the revocation of authority of any Representative;
- d. The National Administrator may rely on instructions and information provided by the Representative as if they were provided by the Applicant;
- e. 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;
- f. the National Administrator may discuss the Project and all matters arising under this Agreement with the Representative as if the Representative were the Applicant.

24.6 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.

24.7 FURTHER ASSURANCE

Each party shall execute any document and perform any action necessary to give full effect to this Agreement, whether prior or subsequent to performance of this Agreement.

24.8 WAIVERS

Any failure or delay by any party to exercise any right under this Agreement shall not operate as a waiver and the single or partial exercise of any right by that party shall not preclude any other or further exercise of that or any other right by that party.

24.9 REMEDIES

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

24.10 SEVERABILITY

Any provision of this Agreement which is invalid in any jurisdiction shall be 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.

24.11 JOINT AND SEVERAL LIABILITY

Any obligation to be performed or restriction to be observed under this Agreement by two or more persons shall bind them jointly and severally.

24.12 COUNTERPARTS

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

Executed as an agreement by:

Carlos Flores

Director, NABERS and Building
Sustainability, Communities and Greater
Sydney Delivery Division

On (date):

In the presence of:

[Insert correct execution block for the Applicant entity – e.g. see various execution blocks below.]

Where an individual is executing in its
personal capacity:

Executed as an agreement by
in the presence of:

.....
Signature of witness

.....
Signature of **[Name of individual]**

.....
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

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 Building Permit Date for the Project; and • The date this Agreement is terminated or expires for any reason. 	<p>Use of NABERS word only and no other Trade Marks.</p> <p>Use of the NABERS word is limited to use on standard size documents and on websites and social media. The NABERS word may not be used on large signs, banners etc.</p> <p>Use of the NABERS word must be accompanied by the words “Targeting” or “Nominated Target Rating” (and mentioning the Space Type and Rating Scope), such as:</p> <ul style="list-style-type: none"> • “Nominated NABERS [Space Type and Rating Scope] Target Rating of [specify Target Rating] Stars with a signed Commitment Agreement”; <p>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.</p> <p>Only the Target Rating that has been nominated (and is current at the relevant time) for the Project may be referred to.</p>	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 on the earliest of:</p> <ul style="list-style-type: none"> • the date the Project is awarded a Certified Performance Rating; • The date that is 35 months after the Occupancy Permit Date for the Project; and • the date this Agreement is terminated or expires for any reason. 	<p>Use of the NABERS word and other Trade Marks associated with Design Reviewed Target Rating and the Design Reviewed Target Certificate (subject to the below).</p> <p>Use of the NABERS word must be accompanied by the words “Design Reviewed Target Rating” (and mentioning the Space Type and Rating Scope), such as:</p> <ul style="list-style-type: none"> • “NABERS [Space Type and Scope] Design Reviewed Target Rating of [specify Target Rating] Stars”; <p>The NABERS word and other Trade Marks may appear on large signs and banners and the Design Reviewed Target Rating Certificate may be displayed.</p>	In progress (Design Reviewed Target Rating)

		<p>The font size to be used for the word “Target” must be the same font size used for the word “NABERS” or larger.</p> <p>Only the Design Reviewed Target Rating that has been awarded (and is current at the relevant time) may be referred to.</p> <p>Display of the then-current Design Reviewed Target Rating Certificate and logo.</p>	
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Other possible Status options for the Agreement are as follows:

Not valid - terminated by the National Administrator	If the National Administrator terminated a Commitment Agreement. This status is a final status for the Project.
Not valid - terminated by Applicant	If the Applicant terminates a Commitment Agreement. This status is a final status for the Project.
Not valid – terminated due to Project transfer	If the Applicant sells some or all of the Project and the purchaser does not sign a deed of novation of the Agreement
Achieved	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	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 Permit 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: 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 Permit is issued for the Project.
Residential Aged Care and Retirement Living	<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).

Schedule 3. LIMITATION OF TRUSTEE LIABILITY

This Schedule is only applicable to Trustees and Trustee Companies.

1. [REDACTED] (**Trustee**) enters into this Agreement in its capacity as the trustee for the [REDACTED] (**Trust**) constituted by a trust deed (**Trust Deed**). The Trustee:
 - a) warrants that:
 - (i) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (ii) 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;
 - (iii) it is not in breach of the Trust Deed;
 - (iv) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this Agreement;
 - (v) it is not aware of any reason why the assets of the Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this Agreement; and
 - (vi) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this Agreement and all necessary action has been taken to authorise the execution and performance of this Agreement under the Trust Deed; and
 - b) 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 1.1.1.a) of this Schedule.
2. Prior to the Trustee being replaced as the trustee of the Trust in accordance with the Trust Deed:
 - a) the Trustee must procure that the replacement trustee enters into a new agreement with the National Administrator on the same terms as this Agreement;
 - b) the Trustee (as outgoing trustee) must procure an agreement from the National Administrator, under which the National Administrator releases the Trustee from the requirement to observe and perform any future obligation under this Agreement;
 - c) the Trustee (as outgoing trustee) must release the National Administrator, from the requirement to observe and perform any future obligation under this Agreement; and
 - d) 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 1.1.2 of this Schedule.

3. Subject to clause 1.1.5 of this Schedule, liability arising under or in connection with this deed (except under or in connection with clause 1.1.1 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.
4. 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 1.1.1 of this Schedule above.
5. Notwithstanding any other provision of this Agreement, clauses 1.1.3 and 1.1.4 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.
6. Nothing in clause 1.1.5 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 STATUS EXTENSION - SECOND PERFORMANCE RATING

1. PROJECT

This Confirmation applies to the Project identified below:

Project Name:

CA 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 5. APPLICANT'S 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:
