



## NABERSNZ Accredited Assessor Agreement

THIS AGREEMENT is made the                      day of                      201█

**BETWEEN:** The **NEW ZEALAND GREEN BUILDING COUNCIL INCORPORATED** (hereinafter referred to as the “Administrator”);

**AND:** [Name and Address of Accredited Assessor] (hereinafter referred to as the “Accredited Assessor”).

### WHEREAS:

1. The National Australian Built Environment Rating System (NABERS) is a performance-based rating system that measures an existing building’s environmental performance during operation.
2. NABERSNZ is the New Zealand adaptation of the Australian NABERS system. The Energy Efficiency Conservation Authority (EECA) is the licensee of NABERSNZ and has engaged the New Zealand Green Building Council as the Administrator of the programme.
3. The Administrator has agreed to allow the Accredited Assessor, who has signed this Agreement and the attached Code of Practice, to work under the Scheme for the purpose of providing Certified Ratings for existing buildings, in accordance with the Rules and NABERSNZ Processes and Procedures.
4. This Agreement is not a contract for work and there is no guarantee that any work will follow.

### This Agreement Witnesses As Follows:

#### 1. Interpretation

1.1 In this Agreement, unless the contrary appears:

“**Assessment Company**” means a company that has entered into an agreement with the Administrator and employs assessors accredited under the Scheme that have signed an agreement in substantially the same format as this one.

“**Administrator**” means the New Zealand Green Building Council Incorporated, acting as Administrator of NABERSNZ.

“**Certified Rating**” means a NABERSNZ rating performed by an Accredited Assessor and approved by the Administrator for an existing building using twelve (12) months of actual data, the methodology outlined in the current Rules and the current NABERSNZ online calculators.

“**Code of Practice**” means the document in **Schedule Two**, as amended by the Administrator from time to time.

“**Commencement Date**” means the date of this Agreement.

“**Confidential Information**” refers to information which:

- (i) is by its nature confidential; or
- (ii) is designated by the Administrator as confidential; or
- (iii) the Accredited Assessor knows or ought to know is confidential.

“**Contract Materials**” means anything brought or required to be brought into existence as part of, or for the purpose of, carrying out, or in connection with, the services provided by the Accredited Assessor under this Agreement, but does not include the Accredited Assessor's client information or pre-existing intellectual property.

“**EECA**” means the Energy Efficiency Conservation Authority of New Zealand who is the licensee of NABERSNZ.

“**GST**” means goods and services tax imposed under the GST Act.

“**GST Act**” means the *Goods and Services Tax Act 1985*.

“**NABERSNZ**” or “**The Scheme**” means the Australian Built Environment Rating System as adapted for the New Zealand market under licence from the OEH and all associated products, Processes and Procedures, software, trademarks, documentation including the Rules (as varied from time to time), and the NABERSNZ rating calculators at [www.nabersnz.govt.nz](http://www.nabersnz.govt.nz) (as varied from time to time) and contract materials.

“**NABERSNZ Trade Mark**” means the trademarks associated with the Scheme.

“**NZGBC**” means the New Zealand Green Building Council who is the Administrator of NABERSNZ.

“**OEH**” means the New South Wales Government through the Office of Environment and Heritage, part of the Department of Premier and Cabinet of New South Wales, Australia who is the owner of the scheme.

“**Processes and Procedures**” means the accredited assessor master documents for NABERSNZ, including but not limited to the Rules; process outline; dispute resolution procedure; assessment procedure, auditing procedure; information transfer procedures; renewal procedure; and any other relevant document

provided by the Administrator to the Accredited Assessor, as amended by the Administrator from time to time.

“**Rules**” means the document detailing the methodology for gathering, interpreting and using data for the purpose of obtaining a Certified Rating for existing buildings using twelve (12) months of actual data.

“**Supervisor**” means an experienced accredited assessor or auditor of the Scheme who has entered into an agreement with the Administrator to perform Supervised Ratings.

“**Supervised Ratings**” means the first two rating applications performed by a Trainee Assessor, which are mentored by an NABERSNZ Supervisor.

“**Tax Invoice**” has the meaning given to that term in the GST Act.

“**Taxable Supply**” has the meaning given to that term in the GST Act.

“**Term**” means the period commencing on the Commencement Date and ending 12 months after the Commencement Date.

1.2 Except where the context otherwise requires a reference in the Agreement to:

- (a) words in the singular include words in the plural and vice versa;
- (b) words denoting individuals include corporations and vice versa;
- (c) words denoting any gender shall include all genders;
- (d) headings are inserted for convenience of reference only and shall not affect the interpretation or construction of this Agreement;
- (e) the Schedules shall form an integral part of this Agreement;
- (f) references to any party to this Agreement or any other document or agreement, includes, where relevant, a reference to that party’s permitted successors and assigns;
- (g) references to any agreement or document includes a reference to such agreement or document as amended, varied, noted, supplemented or replaced from time to time.

## 2. Term of Agreement

2.1 Subject to Clause 12, this Agreement will endure for the Term.

2.2 The term of this Agreement may be extended at the discretion of the Administrator for a period of no longer than two years for a single extension.

2.3 Certain clauses of this Agreement extend beyond the Term and where indicated the Accredited Assessor will be bound by these clauses.

### 3. Trainee Assessors

- 3.1 “Trainee Assessor” means an Accredited Assessor who has not been notified in writing by the Administrator that the Accredited Assessor has successfully completed the practical component of their NABERSNZ training.
- 3.2 The Administrator will notify the Trainee Assessor in writing by email when the Trainee Assessor has successfully completed the practical component of their NABERSNZ training. Until the Trainee Assessor is so notified, the provisions of this clause 3 apply.
- 3.3 The Trainee Assessor acknowledges that (in addition to clause 4.4) accreditation of the Trainee Assessor may be withdrawn, at the sole discretion of the Administrator, if the Trainee Assessor fails to complete the practical component of the NABERSNZ training in accordance with the NABERSNZ Processes and Procedures.
- 3.4 Despite clause 5.1, the Trainee Assessor must not use the Accredited Assessor logo, however they may refer to themselves as a Trainee Assessor.

### 4. NABERSNZ

- 4.1 The Administrator agrees and acknowledges that the Accredited Assessor is accredited for the rating category(s) listed in **Schedule Three**, subject to the terms of this Agreement, and as amended from time to time.
- 4.2 In consideration of accreditation of the Accredited Assessor by the Administrator, the Accredited Assessor agrees:
- (a) to be bound by and comply with the Processes and Procedures of the Scheme and the Code of Practice in **Schedule 2** (as amended from time to time);
  - (b) to comply with the requirements for use of the Accredited Assessor logo set out in Clause 5,
  - (c) to make all documentation used by the Accredited Assessor to complete a Certified Rating available to the Administrator, its authorised representatives and/or auditors in accordance with Clause 11, for up to seven (7) years after the application for a rating certificate, or to make and consent to the Assessment Company through which it is employed to carry out Certified Ratings making such documentation available;
  - (d) if the Accredited Assessor is not employed by an Assessment Company and wishes to conduct Certified Ratings to pay the Administrator any fees and payments as set out in **Schedule One**;
  - (e) to carry out its obligations and perform its services under this Agreement in a proper, professional manner and must take reasonable steps so that at all times its conduct will not bring discredit or disruption to the Administrator or the Scheme; and

- (f) to only carry out Certified Ratings whilst either in the employment of an Assessment Company or having complied with the obligations to take out insurance as set out in clause 7.
- 4.3 The Accredited Assessor acknowledges that the Administrator and EECA reserve the right to amend, when consented by the OEH, the operation and conditions of the Scheme and the Processes and Procedures whether during the term of any period of accreditation, or in respect of any proposed renewal of accreditation.
- 4.4 The Accredited Assessor acknowledges that accreditation of the Accredited Assessor may be withdrawn, at the discretion of the Administrator in consultation with EECA and OEH for a failure to act in accordance with clause 4.2.
- 4.5 The Administrator may reinstate withdrawn accreditation in the event that a breach under clause 4.2 has been rectified to its satisfaction.
- 4.6 Upon termination of this Agreement by either party in accordance with clause 12 of this Agreement, or upon the expiry of the Term, accreditation of the Accredited Assessor is automatically withdrawn.

## **5. The Trade Mark and Logos**

- 5.1 Subject to accreditation and in accordance with the Processes and Procedures, the Administrator grants to the Accredited Assessor a non-exclusive licence to use the Accredited Assessor logo in accordance with the Code of Practice and the “NABERSNZ Brand Guidelines”, as amended from time to time. The “NABERSNZ Brand Guidelines” are made available to all Accredited Assessors via the NABERSNZ website.
- 5.2 The non-exclusive license pursuant to Clause 5.1 terminates upon the withdrawal of accreditation of the Accredited Assessor, or upon the expiry of the Term, or upon termination of this Agreement under Clause 12, whichever occurs first.

## **6. Intellectual Property Rights**

- 6.1 The Accredited Assessor warrants that:
  - (a) the Accredited Assessors carrying out the services under this Agreement will not infringe any intellectual property rights of a third party; and
  - (b) the Accredited Assessor's reports will not contain anything that, to the knowledge of the Accredited Assessor, is libelous or defamatory.
- 6.2 The OEH will own all intellectual property rights, including copyright and other protected rights in respect of all Contract Materials, excluding the NABERSNZ website and database, EECA or NZGBC trademarks, and other materials developed by EECA or the Administrator for NABERSNZ which is not included in the Licence Agreement with the OEH, and these rights vest upon their creation in the OEH, except where the rights are not capable of being vested in the OEH, in which case the Accredited Assessor must ensure that the OEH is irrevocably licensed to use that intellectual property. The Accredited Assessor may not use

Contract Materials for any purpose other than providing its services under this agreement without first obtaining the written consent of the OEH via EECA or the Administrator.

- 6.3 The Administrator, when consented by the OEH, may adapt and change the Contract Materials for any purpose it so wishes.
- 6.4 The Accredited Assessor:
- (a) must ensure that it obtains irrevocable written consent, for the benefit of the Administrator, from all authors of any of the Contract Materials or any work to be incorporated into the Contract Materials, for the use of such Contract Materials or work by the Administrator in any manner it chooses;
  - (b) indemnifies the Administrator, EECA and OEH, and their employees and agents, against any actions, costs, expenses, losses or damages suffered or incurred by the Administrator, or its employees or agents, arising out of, or in any way in connection with, any breach by the Accredited Assessor of its obligations under clauses 6.1, 6.2 or 6.4;
  - (c) acknowledges that the NABERSNZ Certified Rating is not owned by the Accredited Assessor or the Accredited Assessor's company.
- 6.5 The requirements and indemnity in this clause 6 will survive the expiry or termination of this Agreement.

## **7. Warranty, Insurance and Indemnity**

- 7.1 The Accredited Assessor warrants and agrees that it will only carry out Certified Ratings while employed by an Assessment Company, or while subject to clauses 8 and 9.
- 7.2 If the Accredited Assessor carries out Certified Ratings while employed by an Assessment Company, then clauses 8 and 9 do not apply to the Accredited Assessor.
- 7.3 If the Accredited Assessor wishes to carry out Certified Ratings while not employed by an Assessment Company, then the Accredited Assessor agrees to the indemnity and release provisions in clause 8 and to effect insurance policies in accordance with clause 9.

## **8. Indemnity and Release**

- 8.1 For the purpose of this clause 8, the Administrator includes EECA and OEH and the employees and agents of such.
- 8.2 The Accredited Assessor indemnifies and shall keep indemnified the Administrator from and against all actions, claims and proceedings brought against the Administrator for any death, injury, damage or loss to any other person arising from any act or omission of the Accredited Assessor, its employees and agents in relation to the carrying out of Certified Ratings under the Scheme.

- 8.3 The Accredited Assessor's liability in clause 8.2 to indemnify the Administrator is reduced proportionally to the extent that an act or omission of the Administrator caused or contributed to injury, damage or loss involved.
- 8.4 The Accredited Assessor releases the Administrator from and against all actions, claims and proceedings for any damage or loss to the Accredited Assessor that may arise from:
- (a) the carrying out of Certified Ratings under the Scheme by the Accredited Assessor,
  - (b) the success or failure of the Scheme, or
  - (c) the withdrawal of the accreditation of the Accredited Assessor in accordance with this agreement.
- 8.5 Notwithstanding any other clause in this Agreement, neither party shall have any liability to the other for or in connection with any loss suffered by the other which is indirect or consequential, such as loss of profits, loss of opportunity or loss of bargain.
- 8.6 This clause shall continue to bind the Accredited Assessor after the date of termination of this Agreement or the expiry of the Term.
- 8.7 The Accredited Assessor's liability in connection with the Agreement or the performance of the Accredited Assessor's obligations under this Agreement, whether in contract, tort (including negligence) or equity or otherwise is limited to the amounts insured under the insurance policies the Accredited Assessor is required to effect and maintain under this Agreement.

## **9. Insurance**

- 9.1 The Accredited Assessor must ensure that before it carries out any Certified Ratings under the Scheme, the Accredited Assessor has affected the following insurance policies with a reputable insurer:
- (a) Public liability insurance covering the Accredited Assessor, its employees and agents for any death, injury, damage or loss to other persons arising from the carrying out of Certified Ratings under the Scheme by the Accredited Assessor. The Accredited Assessor must maintain such insurance current for the duration of this Agreement and for an amount of not less than \$500,000 New Zealand dollars for any single occurrence.
  - (b) Professional indemnity insurance covering the Accredited Assessor for breaches of professional duty (whether owed in contract or otherwise) in carrying out Certified Ratings under the Scheme. The Accredited Assessor must maintain such insurance current for the duration of this Agreement and six (6) years thereafter, and for an amount of not less than one (1) million New Zealand dollars for any single occurrence.

9.2 The Accredited Assessor must not do anything or fail to do anything that would allow any insurer to reduce a cover or void a policy of insurance required by this Agreement.

## **10. Confidentiality**

10.1 Subject to clause 10.2, the Accredited Assessor shall not without prior written approval of the Administrator, make public or disclose to any third party any Confidential Information, and in giving such written approval, the Administrator, may impose such terms and conditions as it thinks fit.

10.2 The Confidential Information belonging to the Administrator shall only be disclosed by the Accredited Assessor to the Assessment Company as is necessary for the Accredited Assessor to fulfill its obligations under this Agreement.

10.3 The Accredited Assessor shall take all reasonable steps to ensure that it complies with this clause 10.

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

10.5 No action will lie in respect of any breach of this clause where the information was information which:

- (a) ceased to be Confidential Information pursuant to clause 10.6;
- (b) is in the public domain (except where this is a consequence of a breach by the either party to this Agreement or any third party of an obligation of confidence);
- (c) was provided to the Accredited Assessor lawfully by a third party;
- (d) the Accredited Assessor has developed independently without directly or indirectly using any part of the Confidential Information; or
- (e) was legally required to be disclosed, and where reasonable prior notice of disclosure has been given to the Administrator.

10.6 Confidential Information which is the property of the Administrator shall cease to be Confidential Information where the Administrator notifies the Accredited Assessor in writing that the information is no longer confidential.

10.7 This clause shall continue to bind the Accredited Assessor after the date of expiry of the Term, or any extension thereof, or the date of termination of this Agreement, as the case may be.

10.8 Upon expiry or termination of this Agreement, the Accredited Assessor shall return to the Administrator all Confidential Information provided by the Administrator held by or under the control of the Accredited Assessor, and where Confidential Information is no longer held by or under the control of the Accredited Assessor,



the Accredited Assessor shall confirm in writing either its whereabouts or details of its destruction.

- 10.9 Notwithstanding any other provision of this Agreement, the Accredited Assessor may:
- (a) pass on Confidential Information where it is reasonably necessary for the Accredited Assessor to seek professional advice or to defend itself from any suit or claim, provided that such Confidential Information is disclosed under terms no less onerous than the terms of this clause 10; and
  - (b) retain one copy of any document solely for the purpose of its own records and upon the continuing duty of confidence set out in this Agreement.

## **11. Audit**

- 11.1 During the Term, the Accredited Assessor shall, upon receipt of written request and upon reasonable notice, provide the Administrator, its authorised representatives and/or auditors appointed by it with access to (and where relevant, copies of) all records, documents, information, premises, equipment and things which the Administrator reasonably considers necessary to satisfy itself that the Accredited Assessor is continuing to comply with the requirements of the Scheme, including the Rules, the Code of Practice and the Processes and Procedures.
- 11.2 The Accredited Assessor shall provide the Administrator or its authorised representative with the information and reports referred to in clause 11.1 within a reasonable time of any request.

## **12. Termination**

- 12.1 This Agreement may be terminated by four weeks notice in writing from the Accredited Assessor to the Administrator.
- 12.2 The Administrator shall be entitled, by notice in writing to the Accredited Assessor, to immediately terminate this Agreement, without prejudice to any right or remedy which has accrued or which may accrue in favour of either party, where the Accredited Assessor:
- (a) fails to make a payment in accordance with Schedule One;
  - (b) commits any serious or persistent breach of any of the provisions of this Agreement or the Processes and Procedures or the Code of Practice;
  - (c) becomes subject to any form of insolvency administration;
  - (d) assigns its rights otherwise than in accordance with this Agreement;
  - (e) fails to meet the obligations and/or duties outlined in the NABERS Accredited Assessor Agreement signed with OEHL or the Processes and Procedures or the Code of Practice administered by OEHL, if operating as a NABERS Accredited Assessor in Australia; or

- (f) fails to remedy any other breach of its obligations hereunder within one (1) month of receipt of written notice from the Administrator that a breach has occurred.

12.3 Upon withdrawal of accreditation or termination or expiry of this Agreement, the Accredited Assessor must within 21 days of such withdrawal of accreditation or termination or expiry:

- (a) cease use of all NABERSNZ materials and products, including but not limited to computer software, and the Processes and Procedures;
- (b) withdraw any publicly available promotional materials consisting of, incorporating or displaying the NABERSNZ Trademarks or Accredited Assessor logos;
- (c) cease and thereafter refrain from representing that it is accredited or approved by, or affiliated in any way with the Administrator or the Scheme; and
- (d) return the Confidential Information held by or under the control of the Accredited Assessor to the Administrator and where Confidential Information is no longer held by or under the control of the Accredited Assessor, the Accredited Assessor shall confirm in writing either its whereabouts or details of its destruction.

12.4 Termination of this Agreement and withdrawal of accreditation shall be without prejudice to the continuing enforceability of any rights or obligations of the Administrator accrued at the time of termination.

### **13. Assignment**

13.1 The Accredited Assessor shall not assign, in whole or in part, the benefits under this Agreement, without the prior written consent of the Administrator.

13.2 EECA, where granted permission by OEHL, shall have the absolute right to assign all its rights, powers and obligations arising under this Agreement to any person, government department, agency or authority, company or other entity appointed as Administrator of NABERSNZ, by notice in writing to the Accredited Assessor, and the Accredited Assessor shall be deemed to have entered into a contract with the assignee upon the same terms as this Agreement.

13.3 Upon receipt of a notice of assignment under Clause 13.2, the Accredited Assessor agrees to observe and perform all its liabilities and obligations arising under this Agreement that are to be observed or performed on or after the assignment for the benefit of and to the assignee as if the assignee was a party to this Agreement in place of the Administrator.

### **14. Proper Law**

14.1 This Agreement shall in all respects be governed by the law of New Zealand.

**15. Contracts (Privity) Act 1982**

- 15.1 For the purposes of the Contracts (Privity) Act 1981, the indemnity and release given in clause 7 is for the benefit of EECA and OEH and they may directly enforce that obligation. .

**16. Dispute Resolution**

- 16.1 Where any dispute arises between the parties as to any matter arising out of this Agreement, the matter shall be referred to EECA for resolution in accordance with the Dispute Resolution Procedure in the Processes and Procedures.

**17. Precedence of Documents**

- 17.1 In the event of any inconsistency between the clauses of this Agreement and the Schedules or the contents of any other document, the clauses of this Agreement shall prevail to the extent of any inconsistency.

**18. Notices**

- 18.1 All notices, requests, requirements, demands, consents or other communications to be given hereunder shall be in writing and shall be valid and sufficient if sent by prepaid ordinary post (air mail if posted to or from a place outside New Zealand) to the following address, or sent by email to the following email address,:

- (a) If to the Administrator:

NABERSNZ Administrator  
New Zealand Green Building Council  
PO Box 5286  
Wellesley Street  
Auckland 1141  
nabersnz@nzgbc.org.nz

- (b) If to the Assessment Company or the Accredited Assessor:

To the registered office of the Assessment Company, unless otherwise agreed by the parties in writing.

- 18.2 All notices, requests, requirements, demands, consents or other communications shall be deemed to have been served:

- (a) in the case of a postal letter within New Zealand , on the third business day after posting;
- (b) in the case of a postal letter to or from a place outside New Zealand , on the seventh business day after posting;
- (c) in the case of an email, on receipt of the email into the NABERSNZ inbox.

18.3 Any notice, request, requirement, demand, consent or other communication signed by an officer of a party shall be deemed to be duly given and authorised by that party for the purposes of this Agreement.

## **19. General**

19.1 The parties shall do all acts and things necessary for the complete performance of their obligations under this Agreement.

19.2 This Agreement records the entire agreement between the parties in relation to accreditation and supersedes all previous negotiations, agreements, memoranda and commitments between the Administrator, The Assessment Company or the Accredited Assessor in relation to the provision of accreditation.

19.3 No failure or delay on the part of any party in the execution of any right, power or remedy hereunder shall operate as a waiver thereof nor shall any exercise of such right, power or remedy preclude any other or further exercise of any other right, power or remedy hereunder.

19.4 No variation, modification or waiver of any provision of this Agreement nor consent to any departure by any party, shall in any event be of any force or effect unless the same shall be confirmed in writing, signed by the parties hereto or, in the case of waiver or consent, the party giving that waiver or consent, and then such variation, modification, waiver or consent shall be effective only to the extent for which it may be made or given.

19.5 This Agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.

19.6 This Agreement constitutes the entire agreement and understanding between the parties as to the subject matter of this agreement. Upon execution of this agreement, any prior arrangements, agreements, representations or undertakings as to the subject matter of this agreement are superseded.

## **20. GST**

20.1 The fees and other payments due to the Administrator by the Accredited Assessor and as set out in **Schedule One** are GST exclusive.

**IN WITNESS WHEREOF** the parties have executed this Agreement the day and year first written above.

Executed by the <b>NEW ZEALAND GREEN BUILDING COUNCIL INCORPORATED</b> in the presence of:	)	
	)	
	)	
	)	
	)	
	)	
.....	)	.....
Witness	)	New Zealand Green Building Council
	)	Incorporated
	)	
.....	)	.....
Name (printed)	)	Name (printed)

Executed by the Accredited Assessor in the presence of:	)	
	)	
	)	
	)	
	)	
	)	
.....	)	.....
Witness	)	Accredited Assessor
	)	
.....	)	.....
Name (printed)	)	Name (printed)

## Schedule One

### Fees and Payments

#### What Accredited Assessor fees are payable for NABERSNZ Ratings?

Note that the information below indicates the fees payable to the Administrator. The Assessment Company, or the Accredited Assessor (as is applicable) is free to set its own charges to perform the rating based on its own costs and business practices.

The following table provides a list of fees payable to the Administrator for the year commencing 1 July 2012. These fees will be reviewable by the Administrator annually. From time to time fee discounts may be offered. Other charges may apply from time to time as notified in writing by the Administrator for specified activities that the Trainee/Accredited Assessor is required to undertake, for example, training. The Administrator will provide written notice of any changes to fees. Further information on each of the fees is detailed following.

	Rating Lodgement Fees (excl. GST)
<b>NABERSNZ Energy for Offices Certified Ratings</b>	<b>\$990 NZD</b>
	Other Fees (excl. GST)
<b>Annual NABERSNZ Assessor Accreditation</b>	<b>\$850 NZD</b>
<b>Additional Supervisions</b>	<b>\$960 NZD</b>
<b>Ongoing Assessor Training if no NABERSNZ certified ratings are undertaken during the year</b>	<b>\$150 (NZGBC member) \$180 (non NZGBC member)</b>

**Table 1: Fees paid by Assessment Company or Accredited Assessor to Administrator**

#### Rating Lodgement Fees for Certified Ratings and Annual Accreditation

Rating lodgement and annual accreditation fees are payable either by the Assessment Company that employs the Accredited Assessor, or the Accredited Assessor in the event that it is self-employed.

#### Ongoing Assessor Training

In order to maintain their accreditation, all Accredited Assessors will be expected to undertake at least one further education module (as defined by the Administrator) per year, unless they undertake the assessment for one or more Certified Ratings during that year.

#### Payment Arrangements

The Accredited Assessor will not receive any payments from the Administrator under the Agreement. Any payments that are to be made by the Accredited Assessor to the Administrator will be invoiced and are to be made in accordance with the following:

- Payment for accreditation is due annually. The Assessment Company or Accredited Assessor will be invoiced the accreditation fee each year. Payment shall be made within 30 days.
- The Assessment Company or Accredited Assessor must pay the rating application fee in full prior to the application being accepted by the NZGBC for a level one audit.

## SCHEDULE TWO

### Accredited Assessor Code of Practice

#### Introduction

NABERSNZ is a voluntary performance-based rating system that measures an existing building's environmental performance during operation in comparison to other buildings of its type, in New Zealand. The Energy Efficiency Conservation Authority (EECA) as licensee<sup>1</sup> of NABERSNZ, has engaged the New Zealand Green Building Council (NZGBC) to act on their behalf as the Administrator of the programme.

Accredited Assessors<sup>2</sup> are responsible for providing Certified Ratings to existing buildings only using historical data. There is no other way for a building to obtain a Certified Rating except by using an Accredited Assessor.

Accredited Assessors report to the NABERSNZ Administrator.

#### Purpose

This Code of Practice has been developed to assist both the Accredited Assessor and Administrator gain a clear understanding of each other's responsibilities and obligations. The intention of this code is to ensure that all Accredited Assessors operating under NABERSNZ do so in a manner that is consistent with the standards and procedures that form a part of the NABERSNZ scheme.

Each Accredited Assessor is required to agree to this Code of Practice by way of being a signatory, and shall comply with the rules and obligations as set out in this document. If a person does not wish to comply with this Code of Practice, then they will not be accepted as an Accredited Assessor under NABERSNZ.

It is this Code of Practice that establishes Accredited Assessors as being able to act under the NABERSNZ scheme. The Administrator, when consented by the Office of Environment and Heritage (OEH), may amend the Code of Practice from time to time by notice in writing to the Accredited Assessor.

If there is a dispute relating to the interpretation or method of implementing this Code of Practice the issue may be raised with the Administrator. In the case where the Accredited Assessor is not satisfied with the Administrator's response, the issue may be raised by both parties with the EECA.

#### Both Parties

The term 'both parties' is defined as the Accredited Assessor and the Administrator. This Code of Practice binds both parties and defines their specific roles.

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<sup>1</sup> The New South Wales Government through the Office of Environment and Heritage (OEH) has licensed EECA to modify and administer NABERS energy and water for offices in New Zealand

<sup>2</sup> Any references to Accredited Assessors also apply to Trainee Assessors unless otherwise noted.



Both parties understand that all logos and trademarks are the intellectual property of the owner of the NABERSNZ scheme and cannot be used without authorisation.

Both parties have a clear understanding of their obligations including the duration of accreditation and payments that are to be made.

Both parties agree to abide by the procedures and processes as written and amended, when consented by the OEHL, by the Administrator.

Both parties are clear about available dispute resolution, auditing and training requirements and understand what is required to terminate accreditation and therefore any agreement.

**The Administrator shall:**

- Make available to the Accredited Assessor specific marketing material. Initial quantities will be made available free of charge while additional quantities may be ordered by the Accredited Assessor,
- Provide general marketing for the NABERSNZ scheme,
- Provide specific NABERSNZ training and testing (fees may be payable),
- Ensure that all Accredited Assessors are performing to the same high standards to maintain the integrity of NABERSNZ,
- Provide support to the Accredited Assessor to enable them to carry out their work effectively and efficiently,
- Ensure that technical support is available to Accredited Assessors in order to clarify any uncertainty,
- Act in a timely manner so that any disruption to an Accredited Assessor's customer is minimised,
- Ensure that regular and random audits of ratings are conducted, this includes audits of ratings performed under previous agreements, and
- Notify the Accredited Assessor in writing of any amendments to the Processes and Procedures or this Code of Practice.

**The Accredited Assessor shall:**

- Act in accordance with the NABERSNZ processes and procedures as amended from time to time, and specifically the Accredited Assessor master documents, including but not limited to the Rules; process outline; dispute resolution procedure; Code of Practice; auditing procedure; information transfer procedures; renewal procedure; style guide; rulings; and any other document provided by the NABERSNZ Administrator to the Accredited Assessor,
- Complete Certified Ratings in accordance with the Rules, this Code of Practice and other master documents, and submit an application for a Certified Rating and certificate on behalf of the customer,

- Maintain current copies of the master documents,
- Ensure that they are covered by the required insurances to protect themselves in the performance of their duties,
- Ensure all payments as required by the Administrator under this agreement are made in a timely manner,
- Provide their own time to assist in the conduct of any audits and immediately act to remedy any issues raised during an audit, this includes audits of ratings performed under previous agreements. It is not the discovery of an error, but the failure to remedy that error that is to be considered grounds for accreditation being revoked,
- Undertake any training as required, and pay for the cost of that training. Failure to undertake training or the inability to adequately complete a test of skill will lead to accreditation being revoked,
- Maintain records and ensure that the Administrator or their agents have access to original documentation on request,
- Not disclose to other employees, employer, agents or otherwise any confidential information provided by the Administrator to the Accredited Assessor,
- Not assign, in whole or in part, the benefits under this Agreement, without the prior written consent of the Administrator,
- Ensure accreditation fees are paid up-to-date at all times,
- Use the words 'Trainee Assessor' to describe their accreditation status until advised by the Administrator that they have successfully completed their practical training,
- Conform to the requirements for use of Accredited Assessor logo in advertising and marketing material in the promotion of themselves in accordance with any requirements that the Administrator may issue from time to time regarding the use of the logo.
- Promote the use of the NABERSNZ Trademark to all commercial customers, and provide or arrange to provide those commercial customers that are eligible to use the NABERSNZ Trademark, with the style guide describing the use of the NABERSNZ Trademark by commercial customers, and
- On termination of accreditation, cease use of all NABERSNZ products, Processes and Procedures; withdraw any publicly available promotional materials consisting of, incorporating or displaying NABERSNZ Trademarks or Accredited Assessor logos; cease and thereafter refrain from representing that they are accredited or approved by, or affiliated in any way with the Administrator or NABERSNZ,.

### **Code for Best Practice**

- Accredited Assessors must exercise due skill, care and diligence in the performance of their duties.
- Accredited Assessors must complete the required tasks for a customer as soon as it is reasonably practicable.

- Accredited Assessors must inform customers or potential customers of their responsibilities and the implications of the scheme by referring them to the Terms and Conditions on the NABERSNZ website which must be accepted by the customer and the Accredited Assessor before the rating is lodged.
- Accredited Assessors must act on their own behalf and cannot represent themselves as acting on behalf of another individual or organisation without authority.
- Accredited Assessors must have a working knowledge of all relevant regulations in place such as trade practices legislation.
- Accredited Assessors must act promptly, fairly, and honestly with all available information and work to the standard reasonably expected by a practitioner in the industry.
- Accredited Assessors must not mislead or deceive any parties in negotiations or transactions.
- Accredited Assessors must at all times be aware of the confidentiality of information and not use or disclose this information for any purpose other than that required under the terms of the NABERSNZ scheme.
- Accredited Assessors must not accept a fee or commission from any person other than the customer or the customer's agent in relation to services provided under the NABERSNZ scheme.
- Accredited Assessors must only receive a fee for providing a rating certificate regardless of the final rating. A bonus of any kind, or commission based on the number of stars achieved is strictly prohibited.
- Accredited Assessors must disclose to the Administrator any potential conflict of interest when making an application for a Certified Rating and Certificate. Failure to notify a potential conflict of interest, whether real or perceived, will lead to accreditation being revoked.

### **Conflict of interest**

A conflict of interest can be broadly defined as a situation where your actions as an Accredited Assessor may be at odds with another role. This conflict may be seen to encourage a rating that is either higher or lower than a true rating. This can include but is not limited to the following situations:

- The Accredited Assessor is employed by the building owner,
- The Accredited Assessor is employed by the building manager,
- The Accredited Assessor is employed by the building energy consultant, or
- The Accredited Assessor is employed by a competitor of the above.

It is acknowledged that a conflict of interest is possible in a large number of cases. The purpose of this document is to encourage full disclosure rather than to prohibit work in these areas, nor to prevent Accredited Assessors from seeking work in any area they may choose. This document intends to ensure that all potential conflicts of interest are known

and openly understood by all parties and that Accredited Assessors act in the best interest of the NABERSNZ scheme, rather than any other interests.

*Failure of the Accredited Assessor to declare a conflict of interest may result in the Administrator withdrawing accreditation.*

## **Retraining**

The Accredited Assessor may need to undergo retraining or re-examination at their own cost in accordance with the requirements of the Processes and Procedures (as amended from time to time).

*Failure of the Accredited Assessor to attend training or an examination, when notified by the Administrator that training or examination is required, may result in the Administrator withdrawing accreditation.*

## **Termination**

- Upon signing this document and making all necessary payments, the Accredited Assessor is accredited, subject to annual renewal and the terms of the Agreement between the Administrator and The Assessment Company and the Accredited Assessor.
- Accreditation fees are to be paid on an annual basis.
- Accreditation may be revoked or not renewed under the following circumstances:
  - Failure of the Accredited Assessor to declare a conflict of interest,
  - Failure of the Accredited Assessor to act in accordance with this Code of Practice (as amended from time to time),
  - Failure of the Accredited Assessor to undertake training or examination where notified by the Administrator that training or examination is required,
  - Failure of the Accredited Assessor to rectify a rating error notified to them in the auditing process, whether the error occurred in a rating performed in accordance with this Agreement or previous agreements, or repeated ratings errors of a similar nature, or
  - Failure of the Accredited Assessor to abide by the NABERSNZ processes and procedures (as amended from time to time),
  - If all necessary payments (including annual accreditation fees and any other specified fees and charges) are not paid by the due date.
  - Upon termination of any Agreement between the Administrator and the Assessment Company in relation to accreditation of the Accredited Assessor.

I hereby undertake to abide by the terms and conditions described herein.

**Assessor**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Date \_\_\_\_\_

**Witness**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Date \_\_\_\_\_

## **Schedule Three**

### **Rating categories for ACCREDITATION OF ASSESSORS**

The Accredited Assessor nominated in the agreement is able to perform Certified Ratings in the following category(s):

- NABERSNZ Energy for offices