



NABERSNZ Company Agreement

THIS DEED OF AGREEMENT is made the day of 201█

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

AND: █**[Full Company Name; Registered Office; and company no.]**

(hereinafter referred to as “The Company”)

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 permit the Company, using its Accredited Assessors, to work under the Scheme for the purpose of its Accredited Assessors providing Certified Ratings for existing buildings, in accordance with the Rules and NABERSNZ Processes and Procedures.
4. The Company acknowledges that accreditation and other rights under the Scheme extend only to the Accredited Assessors, not to The Company as a whole, and that The Company itself is not accredited or approved by, or affiliated in any way with the Administrator of the Scheme.
5. The Company is to receive no rights or privileges under this agreement except through the services provided by the Accredited Assessors.
6. 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 Where the party referred to as “the Company” is in fact a sole trader the term “The Company” wherever it appears in this Deed shall be taken to also be a reference to that sole trader so as to bind that party in the manner intended in this Deed.

1.2 In this Agreement, unless the contrary appears:

“**AA Agreement**” means an agreement between the Administrator and an Accredited Assessor which permits an Accredited Assessor to perform Certified Ratings for NABERSNZ.

“**Accredited Assessor**” means an assessor that has signed an AA Agreement.

“**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 Company 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 Company’s obligations under this Agreement, but does not include The Company’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 National Australian Built Environment Rating System as adapted for the New Zealand market under licence from the OEHL, 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 (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 Incorporated 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 documents provided by the Administrator to the Accredited Assessors, 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 a 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.

1.3 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 **Error! Reference source not found.**, 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 Company 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 Company acknowledges that the Administrator will notify Trainee Assessors in writing by email when Trainee Assessors have successfully completed the practical component of their NABERSNZ training. The Company acknowledges that until the Trainee Assessors are so notified:
- (a) Accreditation of Trainee Assessors may be withdrawn, at the sole discretion of the Administrator, if Trainee Assessors fail to complete the practical component of the NABERSNZ training in accordance with the NABERSNZ Processes and Procedures;
 - (b) Trainee Assessors must not use the Accredited Assessor logo, but can refer to themselves as a Trainee Assessor;
 - (c) AA Agreements may set out further provisions that apply to Trainee Assessors.

4. **NABERSNZ**

- 4.1 The Administrator agrees and acknowledges that The Company employs Accredited Assessors.
- 4.2 In consideration of accreditation of the Accredited Assessors by the Administrator, The Company agrees:
- (a) to be bound by and comply (where applicable) with the Processes and Procedures of the Scheme and also acknowledges the Code of Practice in **Schedule 2** (as amended from time to time) that applies to the Accredited Assessors; and
 - (b) to obtain all documentation used and produced by its Accredited Assessors to complete Certified Ratings, to keep all such documentation for not less than seven (7) years after application for a Certified Rating certificate, and make such documentation available to the Administrator, its authorised representatives and/or auditors in accordance with Clause 10;
 - (c) to pay the Administrator all fees and payments as set out in Schedule One; and

- (d) 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 Scheme.
- 4.3 The Company 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 Company acknowledges that accreditation of an Accredited Assessor may be withdrawn, at the discretion of the Administrator in consultation with EECA and OEH, in the following circumstances:
- (a) Failure of an Accredited Assessor to comply with the Processes and Procedures of the Scheme and the Code of Practice in Schedule 2 (as amended from time to time); or
 - (b) a failure to pay all fees and payments (including annual accreditation fees and any other specified fees and charges) payable under this Agreement by the due date.

The Company acknowledges that for the purpose of clause 4.4 the Administrator may, in exercising its discretion under clause 4.4, take into account any of the acts or omissions referred to in (a) or (b), which may include but is not limited to a Certified Rating, but which occurred under the previous agreements.

- 4.5 The Administrator may reinstate withdrawn accreditation in the event that a breach under clause 4.4 has been rectified to its satisfaction.

5. **The Trade Mark and Logos**

- 5.1 The Company acknowledges that, subject to accreditation and in accordance with the Processes and Procedures, the Administrator grants to Accredited Assessors by way of the AA Agreement, 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 parties acknowledge that the non-exclusive licence granted under the AA Agreements to each Accredited Assessor and as noted in Clause 5.1 terminates upon the withdrawal of accreditation of that Accredited Assessor, or upon the expiry of the AA Agreement, or upon termination of the AA Agreement, whichever occurs first.
- 5.3 The Company may promote that it has Accredited Assessors in accordance with the “NABERSNZ Brand Guidelines”, as amended from time to time but may not promote itself as in any way affiliated with or endorsed by the Administrator or NABERSNZ.

6. **Intellectual Property Rights**

- 6.1 The Company warrants that:

- (a) the Company carrying out its obligations under this agreement will not infringe the intellectual property rights of a third party; and
 - (b) any reports provided by The Company in accordance with this agreement will not contain anything that, to the knowledge of The Company, is libellous 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 Company must ensure that the OEH is irrevocably licensed to use that intellectual property. The Company may not use Contract Materials for any purpose other than fulfilling its obligations 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 chooses.
- 6.4 The Company:
- (a) must ensure that it obtains irrevocable written consent, for the benefit of the Administrator and The Company, from all authors of any of the Contract Materials or any work incorporated into the Contract Materials, for the use of such work by the Administrator and The Company in any manner they may choose; and
 - (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 Company of its obligations under clause 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. Indemnity and Release**
- 7.1 For the purpose of this clause 7, the Administrator includes EECA and OEH and the employees and agents of such.
- 7.2 The Company 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 Company, its officers and employees (including Accredited Assessors) in relation to the carrying out of Certified Ratings under the Scheme.

- 7.3 The Company's liability in clause 7.2 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.
- 7.4 The Company releases the Administrator from and against all actions, claims and proceedings for any damage or loss to the Company that may arise from:
- (a) the carrying out of Certified Ratings under the Scheme by Accredited Assessors employed by the Company,
 - (b) the success or failure of the Scheme, or
 - (c) the withdrawal of the accreditation of Accredited Assessors employed by the Company in accordance with this agreement.
- 7.5 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.
- 7.6 This clause shall continue to bind The Company after the date of termination of this Agreement or the expiry of the Term.
- 7.7 The Company's liability in connection with the Agreement or the performance of the Company'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 Company is required to effect and maintain under this Agreement.

8. Insurance

- 8.1 The Company must ensure that before any Accredited Assessor employed or engaged by the Company carries out any Certified Ratings under the Scheme, the Company has effected or caused to be effected the following insurance policies with a reputable insurer:
- (a) Public liability insurance covering the Company and all Accredited Assessors employed or engaged by the Company for any death, injury, damage or loss to other persons arising from the carrying out of Certified Ratings under the Scheme by Accredited Assessors employed or engaged by the Company. The Company 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 Company and all Accredited Assessors employed or engaged by the Company for breaches of professional duty (whether owed in contract or otherwise) in carrying out Certified Ratings under the Scheme. The Company must maintain such insurance current for the duration of this Agreement and for six (6) years thereafter and for an amount of not less than one (1) million New Zealand dollars for any single occurrence.
- 8.2 The Company 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.

9. **Confidentiality**

- 9.1 Subject to clause 9.2, the Company 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.
- 9.2 The Company may disclose the Confidential Information as is necessary to its Accredited Assessors, provided that the Company procures from such Accredited Assessors an agreement to maintain the confidentiality of such Confidential Information on terms no less onerous than those contained in this Agreement.
- 9.3 The Company shall take all reasonable steps to ensure that its employees, agents, and servants, comply with this clause 9.
- 9.4 The Company shall not make or allow to be made copies of or extracts of all or any part of the Confidential Information except for the purpose of this Agreement.
- 9.5 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 9.6;
 - (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 Company lawfully by a third party;
 - (d) the Company has independently developed 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.
- 9.6 Confidential Information which is the property of the Administrator shall cease to be Confidential Information where the Administrator notifies The Company in writing that the information is no longer confidential.
- 9.7 This clause shall continue to bind The Company 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.
- 9.8 Upon expiry or termination of this Agreement The Company shall return to the Administrator all Confidential Information held by or under the control of the Company, and where Confidential Information is no longer held by or under the control of the Company, the Company will confirm in writing either its whereabouts or details of its destruction.
- 9.9 Notwithstanding any other provision of this Agreement, the Company may:
- (a) pass on Confidential Information where it is reasonably necessary for the Company to seek professional advice or to defend itself from any suit or claim, provided that such Confidential Information is disclosed under terms no less onerous than the terms of this clause 9; 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.

10. **Audit**

10.1 During the Term The Company 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 Company and the Accredited Assessors are continuing to comply with the requirements of the Scheme, including the Rules, the Code of Practice and the Processes and Procedures.

10.2 The Company shall provide the Administrator or its authorised representative with the information and reports referred to in clause 10.1 within a reasonable time of any request.

11. **Termination**

11.1 This Agreement may be terminated by four weeks notice in writing from The Company to the Administrator.

11.2 The Administrator shall be entitled, by notice in writing to The Company, 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 Company:

- (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;
- (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 Company Agreement signed with OEH or the Processes and Procedures or the Code of Practice administered by OEH, if operating with NABERS Accredited Assessor(s) 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.

11.3 Upon termination or expiry of this Agreement, The Company must within 21 days of such 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; 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

- (c) return the Confidential Information held by or under the control of the Company to the Administrator and where Confidential Information is no longer held by or under the control of the Company, the Company will confirm in writing either its whereabouts or details of its destruction.

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

12. **Assignment**

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

12.2 EECA, where granted permission by OEH, 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 Company, and The Company shall be deemed to have entered into a contract with the assignee upon the same terms as this Agreement.

12.3 Upon receipt of a notice of assignment under Clause 12.2, The Company agrees to observe and perform all its liabilities and obligations arising under this Agreement that are to be observed or performed on or after the assignment for the benefit of and to the assignee as if the assignee was a party to this Agreement in place of the Administrator.

13. **Proper Law**

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

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

14.1 For the purposes of the Contracts (Privity) Act 1982, the indemnity and release given in clause 7 is for the benefit of EECA and OEH and they may directly enforce that obligation.

15. **Dispute Resolution**

15.1 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.

16. **Precedence of Documents**

16.1 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.

17. **Notices**

17.1 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 Company:

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

17.2 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.

17.3 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.

18. **General**

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

18.2 This Agreement constitutes the entire agreement and understanding between the parties as to the subject matter of this Agreement. Upon execution of this Agreement, any prior arrangements, agreements, representations or undertakings as to the subject matter of this agreement are superseded except as provided for in clause 4.4.

18.3 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.

18.4 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.

18.5 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.

18.6 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.

19. **GST**

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

Executed as a Deed by the parties on the day and year first written above.

| | | |
|------------------------------------------------------------------------|---|-------------------------------------------------|
| Executed by the NEW ZEALAND GREEN BUILDING COUNCIL INCORPORATED |) | |
| in the presence of: |) | |
| |) | |
| Witness |) | New Zealand Green Building Council Incorporated |
| |) | |
| Name (printed) |) | Name (printed) |

| | | |
|-------------------------------------|---|---------------------------------------------------------|
| EXECUTION BY A COMPANY | | EXECUTION BY A SOLE TRADER EMPLOYING AN ASSESSOR |
| Executed by the Company |) | Executed by: |
| |) | |
| Director |) | Sole Trader Signature |
| |) | |
| Name (printed) |) | Sole Trader Name (printed) |
| |) | |
| Director / Company Secretary |) | Sole Trader Witness signature |
| |) | |
| Name (printed) |) | Sole Trader Witness 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 Lodgment Fees (excl. GST) |
|--------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| NABERSNZ Energy for Offices Certified Ratings | \$990 NZD |
| | Other Fees (excl. GST) |
| Annual NABERSNZ Assessor Accreditation | \$850 NZD |
| Additional Supervisions | \$960 NZD |
| Ongoing Assessor Training if no NABERSNZ certified ratings are undertaken during the year | \$150 (NZGBC member) \$180 (non NZGBC member) |

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

Rating Lodgment 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 Agreements

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 Practise

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 licensee¹ of NABERSNZ, has engaged the New Zealand Green Building Council (NZGBC) to act on their behalf as the Administrator of the programme.

Accredited Assessors² 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 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 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.

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.

¹ 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.

² Any references to Accredited Assessors also apply to Trainee Assessors unless otherwise noted.

Both parties agree to abide by procedures and processes as written and amended, when consented by the OEH, 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 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:
 - o Failure of the Accredited Assessor to declare a conflict of interest,
 - o Failure of the Accredited Assessor to act in accordance with this Code of Practice (as amended from time to time),
 - o Failure of the Accredited Assessor to undertake training or examination where notified by the Administrator that training or examination is required,
 - o 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
 - o Failure of the Accredited Assessor to abide by the NABERSNZ processes and procedures (as amended from time to time),
 - o If all necessary payments (including annual accreditation fees and any other specified fees and charges) are not paid by the due date.
 - o Upon termination of any Agreement between the Administrator and the Company in relation to accreditation of the Accredited Assessor.