

Attachment A - User Interface Accreditation Terms & Conditions

Nationwide House Energy Rating Scheme (NatHERS)
for existing homes

Version History

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ATTACHMENT A – USER INTERFACE ACCREDITATION TERMS & CONDITIONS**1. CONTEXT**

- 1.1 This document sets out the Terms and Conditions that apply to a User Interface Tool Provider and use of the User Interface Tool accredited under the Nationwide House Energy Rating Scheme (NatHERS) for existing homes.
- 1.2 To avoid doubt, by signing the Accreditation Notice, the User Interface Tool Provider agrees to be bound by the Agreement, which consists of:
 - a. the Accreditation Notice;
 - b. these Terms and Conditions; and
 - c. the User Interface Protocol.
- 1.3 The Terms and Conditions are Attachment A to the Accreditation Notice issued by the NatHERS Administrator to the User Interface Tool Provider for the accreditation of the User Interface Tool and should be read in conjunction with the Accreditation Notice and the User Interface Protocol.
- 1.4 If there is any inconsistency between any of these documents, the order of priority to resolve the conflict will be:
 - a. the Accreditation Notice;
 - b. these Terms and Conditions (including appendices);
 - c. the User Interface Protocol.
- 1.5 The NatHERS Administrator may specify in the Accreditation Notice additional requirements that the User Interface Tool Provider must meet to maintain accreditation.
- 1.6 Retired Versions:
 - a. are subject to these Terms and Conditions as set out in the Accreditation Notice; and
 - b. must not be used to create a new Assessment File or create a new Home Energy Rating Certificate without written agreement from the NatHERS Administrator.
- 1.7 Variations to these Terms and Conditions are only permitted in accordance with clause 23 or unless otherwise specified in the Agreement.

2. INTERPRETATION AND DEFINITIONS

2.1 In these Terms and Conditions, except where the context otherwise requires:

- a. the singular includes the plural and vice versa, and a gender includes other genders;
- b. another grammatical form of a defined word or expression has a corresponding meaning;
- c. a reference to a clause, sub-clause, paragraph, schedule or attachment is to a clause, sub-clause or paragraph of, or schedule or attachment to, this document, and a reference to this document includes any schedule or attachment;
- d. a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- e. a reference to AUD, A\$, \$A, dollar or \$ is to Australian currency;
- f. a reference to time is to local time in Canberra, Australia;
- g. a reference to a party is to a party to this document, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- h. a reference to a person or entity includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other legal body;
- i. headings are for ease of reference only and do not affect interpretation;
- j. a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- k. the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- l. any agreement, representation, warranty, or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- m. any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally; and
- n. a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this document or any part of it.

2.2 Except where the contrary intention is expressed, the following definitions are used in this document:

Account	The account created by or on behalf of, or otherwise used by, a User to access and use the User Interface Tool and Certificate Portal.
Accreditation Notice	The notice issued by the NatHERS Administrator to the User Interface Tool Provider, under which the NatHERS Administrator grants accreditation to particular versions of the User Interface Tool (which may include Major Versions and Retired Versions).
AccuRate Enterprise (AccuRate)	The commercial, online based, calculation engine developed by the Commonwealth Scientific and Industrial Research Organisation (CSIRO) comprising the Chenath Engine that will enable the processing of data to produce a Home Energy Rating Certificate, Star Rating and Home Energy Rating.
Agreement	The agreement between the NatHERS Administrator and the User Interface Tool Provider comprising the Accreditation Notice, these Terms and Conditions (including any appendices), and the User Interface Protocol.
Agreement Period	Unless terminated earlier, means a period of five (5) years from the Commencement Date.
Approved Settings	The only and default operational configuration, mode or function which is permitted to be used for NatHERS for existing homes assessments when using the User Interface Tool.
Assessment File	A software file containing all data that a User enters into the User Interface Tool that generates results and the production of a Home Energy Rating Certificate.
Assessor	An individual who has been accredited by an AASP or NatHERS Administrator to perform a NatHERS for existing homes assessment.

Assessor Accreditation Service Provider (AASP)	Includes any entity appointed by the NatHERS Administrator to accredit Assessors.
business day	Unless otherwise specified, a day that is not a Saturday, Sunday or recognised public holiday of the Commonwealth, or a state or territory of Australia in which the action is to be done, or days subject to shut down periods specified by the NatHERS Administrator.
Certificate Portal	The portal used by the User Interface Tool to generate a Home Energy Rating Certificate (also referred to as the HStar Portal, as at the Commencement Date).
Chenath Engine	The calculation engine developed by CSIRO that predicts annual totals of hourly heating and cooling energy requirements for residential buildings.
Climate Zone	Specified regions that experience similar climatic conditions into which Australia is divided by NatHERS are described on the NatHERS website .
Commencement Date	The date the Accreditation Notice is executed by the last party to do so.
Detrimental Use	Circumstances that arise with respect to a User and their use of the User Interface Tool or Home Energy Rating Certificate that will or may cause detriment to NatHERS and its reputation or integrity or is a breach of this Agreement, including a breach of Appendix 1 of these Terms and Conditions.
Disable	Refers to the removal of the ability of any User to access or use an Account associated with the User Interface Tool or Certificate Portal, either permanently or for a period specified by the NatHERS Administrator.
General Update	Includes minor changes, upgrades, patches or bug fixes undertaken by a User Interface Tool Provider with examples provided in the User Interface Protocol further detailing what may constitute a General Update.

Home Energy Rating	A NatHERS energy performance rating from 0 to 150, based on the expected energy use, costs and emissions of an entire home taking into account the shell of a building, together with the fixed appliances in the building, such as heating and cooling, hot water systems, lighting, pool/spa equipment, cooking and plug-in appliances, and on-site energy generation and storage. The maximum Home Energy Rating that is shown on a Home Energy Rating Certificate is 150 out of 100.
Home Energy Rating Certificate	<p>The certificate generated by a User Interface Tool, in conjunction with AccuRate Enterprise, upon completion of a NatHERS for existing homes assessment.</p> <p>A Home Energy Rating Certificate, in such form as determined by the NatHERS Administrator, includes:</p> <ul style="list-style-type: none"> - the Home Energy Rating; - the thermal Star Rating and energy loads; - the key thermal performance features of the building fabric; - the building's appliances and on-site energy generation and storage; - the building's emissions; - details of the Assessor who carried out the NatHERS for existing homes assessment and their accreditation; - the building's address; and - relevant information regarding the building's energy efficiency requirements. <p>An Assessor must use the Approved Settings to generate a Home Energy Rating Certificate.</p>
HStar Portal	The online certification and service portal managed by CSIRO that receives data from AccuRate to generate a Home Energy Rating Certificate. As at the Commencement Date, the HStar Portal is the Certificate Portal.

Intellectual Property Rights	Includes all present and future rights in relation to copyright, trademarks, designs, patents or other proprietary rights, or any rights to registration of such rights whether created before or after the date of this Agreement, and whether existing in Australia or otherwise.
Major Version	A version of a User Interface Tool which addresses updates to the User Interface Tool following a Reaccreditation Event. Major Versions are accredited by an Accreditation Notice.
Minister	The Commonwealth Government Minister or Ministers whose functions include governance of residential energy efficiency.
Minor Version	A version of the User Interface Tool that results from a General Update. Minor Versions are confirmed in writing by the NatHERS Administrator.
NatHERS	The Nationwide House Energy Rating Scheme.
NatHERS Administrator	As at the Commencement Date, the Commonwealth of Australia as represented by the Department of Climate Change, Energy, the Environment and Water, which holds the administrative responsibility for residential energy efficiency ratings. NatHERS is administered by the Commonwealth of Australia on behalf of all States and Territories. The NatHERS Administrator reports to the NatHERS Steering Committee.
NatHERS for existing homes assessment	The exercise and activities undertaken by an Assessor in performing a NatHERS assessment of an existing home. This includes attending a home to collect data, using a User Interface Tool to estimate the energy efficiency and performance of buildings, and generating a Home Energy Rating, Star Rating, and Home Energy Rating Certificate

NatHERS Integrity Purposes	Activities which underpin NatHERS integrity and quality standards, including quality assurance, audits and investigations and use of data for analysis, research, and policy development. NatHERS Integrity Purposes do not include using data for commercial purposes.
NatHERS Steering Committee	As at the Commencement Date, includes representatives of the Commonwealth and State and Territory governments reporting to the Energy and Climate Change Ministerial Council (ECMC). The NatHERS Steering Committee oversees the development and administration of NatHERS.
NatHERS User Interface General Update Request Form	The document of that name that will be made available upon request to the NatHERS Administrator. The form will be used and completed by a User Interface Tool Provider when seeking approval from the NatHERS Administrator to incorporate a General Update to a User Interface Tool.
NatHERS Website	The website that contains relevant information about NatHERS .
Personal Information	Has the meaning given to “personal information” in section 6(1) of the <i>Privacy Act 1988</i> (Cth).
Privacy Law	The <i>Privacy Act 1988</i> (Cth) and, in the event that the User Interface Tool Provider is a state or territory government agency, the relevant state or territory privacy legislation.
Reaccreditation Event	An event that could trigger the need for a Major Version update as outlined in the User Interface Protocol or as otherwise notified by the NatHERS Administrator.
Registered Training Organisation	A vocational education and training provider registered in accordance with the Australian Skills Quality Authority’s (ASQA) requirements.
Retired Version	Any versions, including Major and Minor Versions of accredited User Interface Tools superseded by a newer version, as the case may be.

Star Band Criteria	A total annual heating and cooling energy load (MJ/m ²) to star rating conversion table.
Star Rating	A star value (from 0 to 10 stars) determined by using a User Interface Tool for a particular building under the Star Band Criteria for the Climate Zone in which the building is located.
Technical Note	The NatHERS for existing homes Technical Note, being the document (as updated or created from time to time) that sets out the NatHERS technical requirements for Assessors when undertaking a NatHERS for existing homes assessment.
Terms and Conditions	The terms and conditions set out in this document, and which form a part of the Agreement.
User	A person or entity granted a licence or right by the User Interface Tool Provider to use the User Interface Tool.
User Interface Protocol	The NatHERS for existing homes User Interface Protocol (UIP), being the document (as updated or created from time to time) that outlines the technical requirements of User Interface Tools and processes for the Accreditation of User Interface Tools and new or amended versions of previously accredited User Interface Tools.
User Interface Tool	<p>A front-end tool, used by a User, to input data and evidence collected by a User that is conveyed into the back-end tool, AccuRate Enterprise. AccuRate Enterprise will generate a rating and produce a Home Energy Rating Certificate, and send this information digitally to the User Interface Tool for a User to view.</p> <p>The User Interface Tool is accredited with the functionality of the Approved Settings by the NatHERS Administrator in accordance with the User Interface Protocol, with the designated name and version number detailed in the Accreditation Notice.</p>

User Interface Tool Provider	The entity specified in the Accreditation Notice that owns or has the right to sell or license the use of the User Interface Tool.
User Interface Tool Provider Representative	The representative of a User Interface Tool Provider who is nominated by the User Interface Tool Provider to be the primary contact between the NatHERS Administrator and the User Interface Tool Provider, as updated by the User Interface Tool Provider by notice to the NatHERS Administrator from time to time.
User Interface Tool User Provisions	Includes, as applicable, the terms and conditions for Users set out in Appendix 1.

3. COMMENCEMENT AND AGREEMENT PERIOD

- 3.1 The Agreement will commence on the Commencement Date and expire at the end of the Agreement Period unless it is terminated earlier in accordance with these Terms and Conditions.

4. ACCREDITATION

- 4.1 The NatHERS Administrator may, at any time, issue an Accreditation Notice to the User Interface Tool Provider to accredit:
- a. a Major Version; and
 - b. a Retired Version,
- and which may be subject to any requirements set out in the Accreditation Notice.
- 4.2 The User Interface Tool Provider may request accreditation of a Major Version by writing to the NatHERS Administrator:
- a. if a Reaccreditation Event occurs; or
 - b. where the User Interface Tool Provider considers that a new Major Version of the User Interface Tool is required.
- 4.3 The NatHERS Administrator may, in its sole and absolute discretion, issue an Accreditation Notice in response to the request set out in clause 4.2.
- 4.4 The NatHERS Administrator will include in each Accreditation Notice:
- a. the date on which the accreditation in respect of any Retired Version may end; and

- b. any variations to the Agreement, in accordance with clause 23.
- 4.5 Unless the User Interface Tool Provider provides written notice to the NatHERS Administrator within 20 business days of the date of an Accreditation Notice that it does not accept the Accreditation Notice, the User Interface Tool Provider will be deemed to have consented to the Accreditation Notice, effective from the date which follows 20 business days from the date of the Accreditation Notice.
- 4.6 If the User Interface Tool Provider rejects an Accreditation Notice, then the NatHERS Administrator may:
- a. agree to continue this Agreement on the same terms and conditions, as though the Accreditation Notice had never been issued; or
 - b. terminate this Agreement in accordance with clause 29.
- 4.7 For the avoidance of doubt, accreditation of the User Interface Tool only applies with the combined application and use of the Approved Settings of the User Interface Tool.

5. SUSPENSION OR REVOCATION OF ACCREDITATION

- 5.1 Accreditation of a User Interface Tool (and any Retired Versions) may immediately be suspended or revoked by written notice from the NatHERS Administrator where:
- a. ownership or control of the User Interface Tool or the User Interface Tool Provider is transferred to a new entity as set out in clause 7.1;
 - b. the User Interface Tool Provider breaches a material term of this Agreement as set out in clause 8.2;
 - c. the User Interface Tool Provider fails to comply with any requirements set out in the applicable Accreditation Notice;
 - d. the User Interface Tool fails to meet the requirements of the Technical Note or fails to enable Users to comply with the Technical Note when undertaking a NatHERS for existing homes assessment;
 - e. the User Interface Tool fails to meet the requirements of the User Interface Protocol;
 - f. the User Interface Tool Provider fails to comply with its obligations under clause 9.1, including without limitation failing to take all reasonable steps to enforce the applicable User Interface Tool User Provisions; or
 - g. the User Interface Tool produces inaccurate or unreliable results or is otherwise incapable of being used to produce a Home Energy Rating, Star Rating or Home Energy Rating Certificate.

- 5.2 The User Interface Tool Provider may reapply for accreditation of its User Interface Tool, at its own expense, in accordance with the User Interface Protocol or as otherwise requested in writing by the NatHERS Administrator.
- 5.3 If accreditation of a User Interface Tool is suspended or revoked and not reaccredited, the NatHERS Administrator may terminate this Agreement in accordance with clause 29.

6. USER INTERFACE TOOL VERSIONS

- 6.1 Upon acceptance of the Accreditation Notice, the User Interface Tool Provider must immediately notify all Users of:
 - a. which versions of the User Interface Tool are accredited by the NatHERS Administrator (if any);
 - b. which versions of the User Interface Tool are Retired Versions (if any); and
 - c. the terms of use of any Retired Versions.
- 6.2 The User Interface Tool Provider must back-up all current and retired Major and Minor Versions of the User Interface Tool and maintain the records in a state that allows these to be used to recalculate a NatHERS for existing homes assessment where required by the NatHERS Administrator for seven (7) years from the date on which each version was last used by a User.
- 6.3 The User Interface Tool Provider must give the NatHERS Administrator:
 - a. 60 business days' notice before permanently deleting a back-up version;
 - b. a copy of the back-up version (including all relevant documentation in order to use the relevant version of the User Interface Tool) to the NatHERS Administrator prior to the final deletion of the relevant version; and
 - c. a perpetual, royalty free, worldwide, irrevocable licence to use and sublicense the relevant version for NatHERS Integrity Purposes.
- 6.4 The User Interface Tool Provider must use its best endeavours to ensure the User Interface Tool is capable of opening a file created in previous versions. At a minimum, this must include the two most recent versions of the User Interface Tool.
- 6.5 If the User Interface Tool Provider ceases offering the User Interface Tool for sale or licensing, the User Interface Tool Provider must allow existing Users of the User Interface Tool to continue using the User Interface Tool for the purposes of NatHERS for existing homes assessments for six (6) months from the date that the User Interface Tool notifies the NatHERS Administrator and Users (whichever notification is later) that the User Interface Tool will cease to be available for sale or licensing.

7. TRANSFER OF OWNERSHIP OF THE USER INTERFACE TOOL

- 7.1 If ownership or control of the User Interface Tool or the User Interface Tool Provider is transferred to another entity (a **New Owner** or **New Controlling Entity**):
- the accreditation of the User Interface Tool may, with the NatHERS Administrator's prior written consent, also be transferred to the New Owner or New Controlling Entity for the remainder of the Agreement Period; or
 - the New Owner or New Controlling Entity may seek re-accreditation of the User Interface Tool in accordance with the principles of the User Interface Protocol.
- 7.2 The User Interface Tool Provider must give at least 20 business days' notice to the NatHERS Administrator of any proposed change in the ownership or control of the User Interface Tool or the User Interface Tool Provider.
- 7.3 If the New Owner or New Controlling Entity seeks re-accreditation of the User Interface Tool, the User Interface Tool Provider must do all acts and things, including execute deeds, documents and instruments, as required to transfer this Agreement and the accreditation to the New Owner or New Controlling Entity.

8. MATERIAL BREACH

- 8.1 If the User Interface Tool Provider breaches any material term of this Agreement, including clauses 9 (User Interface Tool User Provisions), 12 (Cyber Security), 13 (User Interface Support), 14 (Generating Home Energy Rating Certificates), 15 (Assessor Accreditation Service Provider (AASP)), 16 (NatHERS Administrator's Access to Data and User Interface Tool), 18 (Insurance), 20 (Records), 24 (Confidentiality) or 25 (Privacy), the NatHERS Administrator may give a written notice to the User Interface Tool Provider:
- specifying details of the breach; and
 - may set out the steps required to rectify the breach within 40 business days of the date of the notice, or such other period as agreed by the parties in writing (where such agreement is not to be unreasonably withheld or delayed).
- 8.2 If the User Interface Tool Provider does not rectify the breach to the satisfaction of the NatHERS Administrator in accordance with the notice given under clause 8.1, the NatHERS Administrator may revoke or suspend the accreditation of the User Interface Tool, at its absolute discretion, consistent with clause 5.
- 8.3 For the avoidance of doubt, if the User Interface Tool's accreditation is revoked under clause 8.2, the User Interface Tool Provider may reapply for accreditation of its User Interface Tool, at its own expense, in accordance with the User Interface Protocol or as directed in writing by the NatHERS Administrator.
- 8.4 The NatHERS Administrator, at its absolute discretion, may:

- a. decide that any future re-accreditation of the User Interface Tool under clause 8.3 is conditional on the resolution or rectification of the material breach of the Agreement that preceded revocation of the accreditation of the User Interface Tool; or
- b. terminate this Agreement in accordance with clause 29.

9. USER INTERFACE TOOL USER PROVISIONS

- 9.1 The User Interface Tool Provider acknowledges that a User's compliance with the User Interface Tool User Provisions in Appendix 1 is essential to the operation and integrity of NatHERS.
- 9.2 The User Interface Tool Provider must:
 - a. ensure that the User Interface Tool User Provisions (consisting of User terms and conditions) are provided to, and agreed by, Users prior to the User's use of the User Interface Tool;
 - b. notify the NatHERS Administrator in writing within five (5) business days after becoming aware of a User breaching the applicable User Interface Tool User Provisions; and
 - c. ensure that any Users have agreed to, and take all reasonable steps to enforce, the applicable User Interface Tool User Provisions.
- 9.3 The User Interface Tool Provider may include its own User terms and conditions, in addition to the User Interface Tool User Provisions in Appendix 1, provided these are consistent with, and do not derogate from, the User Interface Tool User Provisions.
- 9.4 On written notice from the NatHERS Administrator, the User Interface Tool User Provisions may be amended from time to time by the NatHERS Administrator. The User Interface Tool Provider is required to disclose the amended changes to Users within 10 business days of the date of the notice, and ensure each User agrees to the amendments prior to their continued use of the User Interface Tool.
- 9.5 Without limiting clause 9, the User Interface Tool Provider must also:
 - a. take reasonable steps to detect and prevent (via system-generated logs) non-compliant use of the User Interface Tool by Users which attempt to or have resulted in circumvention of requirements to pay any applicable fees; and
 - b. take reasonable steps to detect and prevent any rendering of an invoice to a User under the applicable end user licence agreement in respect of any use of the User Interface Tool by the User in a manner designed to circumvent requirements to pay applicable fees.

- 9.6 Without limitation to the User Interface Tool Provider's obligations under this clause 9, the User Interface Tool Provider acknowledges that circumstances may arise with respect to a User and its use of the User Interface Tool or Certificate Portal that will or may cause detriment to NatHERS and its integrity or is a breach of the User Interface Tool User Provisions (**Detrimental Use**).
- 9.7 Subject to clause 9.8, the User Interface Tool Provider agrees that where the NatHERS Administrator reasonably determines that there has been Detrimental Use, the User Interface Tool Provider must:
- a. on written notice from the NatHERS Administrator, promptly provide to the NatHERS Administrator (and no later than within 10 business days of the date of the notice), such information and documentation that is reasonably requested by the NatHERS Administrator that relate to the Detrimental Use described in the notice; and
 - b. comply with all reasonable directions of the NatHERS Administrator to remedy or mitigate the Detrimental Use.
- 9.8 If the User Interface Tool Provider disputes:
- a. that there has been Detrimental Use; or
 - b. that the directions given by the NatHERS Administrator under clause 9.7b are reasonable,
- then the User Interface Tool Provider may refer the issue for dispute resolution in accordance with clause 27.
- 9.9 If the NatHERS Administrator or the User Interface Tool Provider suspects or becomes aware of Detrimental Use of the User Interface Tool or Certificate Portal by a User, the NatHERS Administrator may direct the User Interface Tool Provider to undertake the following actions:
- a. issue a warning notice to the User;
 - b. issue a suspension notice to the User; or
 - c. Disable the User's Account.
- 9.10 The User Interface Tool Provider must comply with the direction arising from clause 9.9, including undertaking actions within any timeframes specified by the NatHERS Administrator.
- 9.11 Any warning notice and suspension notice provided to Users by the User Interface Tool Provider must be in a form set out, as prepared and made available by the NatHERS Administrator, or as otherwise determined by the NatHERS Administrator or agreed in writing with the NatHERS Administrator from time to time.

- 9.12 The User Interface Tool Provider agrees that the NatHERS Administrator may enforce any right of the User Interface Tool Provider under the User Interface Tool User Provisions on behalf of the User Interface Tool Provider.

10. INCORPORATION OF REASONABLE CHANGES TO THE USER INTERFACE TOOL

- 10.1 The NatHERS Administrator may, by written notice, require the User Interface Tool Provider to incorporate reasonable changes into the User Interface Tool during the Agreement Period to address software bugs, improve the functionality of the User Interface Tool or the consistency of the User Interface Tool with NatHERS requirements (including standardising the formats of the Home Energy Rating Certificates).
- 10.2 The User Interface Tool Provider will advise the NatHERS Administrator by notice in writing within 20 business days after receiving the notice under clause 10.1 of the cost, difficulty, and time of implementing the required changes.
- 10.3 If the NatHERS Administrator and the User Interface Tool Provider agree, in writing, within 30 business days after the User Interface Tool Provider receives notice under clause 10.1 that the changes to the User Interface Tool are reasonable, with consideration given to any details provided in the notice under clause 10.2 if applicable, the User Interface Tool Provider will implement the agreed changes within 20 business days of agreement under this clause 10.2 or such longer period as agreed by the parties.
- 10.4 If the NatHERS Administrator and the User Interface Tool Provider cannot reach agreement on the required changes within 30 business days after the User Interface Tool Provider receives notice under clause 10.1, the NatHERS Administrator will:
- a. seek a decision from the NatHERS Steering Committee as to what changes the User Interface Tool Provider must make; and
 - b. table the User Interface Tool Provider's concerns regarding the cost, difficulty, and time of implementing the changes to the NatHERS Steering Committee, and the NatHERS Steering Committee will take such concerns into reasonable consideration when making its decision, together with the reasons for the NatHERS Administrator's requested changes and the responses from any other affected provider of User Interface Tools.
- 10.5 If the NatHERS Steering Committee decides under clause 10.4a that changes must be implemented:
- a. the User Interface Tool Provider must implement the changes as decided by the NatHERS Steering Committee; or

- b. subject to clause 10.4b, if the User Interface Tool Provider is not satisfied with the Steering Committee's decision relating to the cost, difficulty and time required to implement the changes, then the User Interface Tool Provider may, at its absolute discretion, issue a notice of Dispute in accordance with clause 27.2.
- 10.6 If the User Interface Tool Provider considers, acting reasonably, that implementing the changes is not commercially viable:
 - a. the User Interface Tool Provider may decommission the User Interface Tool at the end of the period provided in its Accreditation Notice; and
 - b. if decommissioned, the User Interface Tool will no longer be accredited unless otherwise determined by the NatHERS Administrator.

11. APPROVAL OF GENERAL UPDATES

- 11.1 Prior to implementing a General Update, the User Interface Tool Provider must provide the NatHERS Administrator with a completed NatHERS User Interface General Update Request Form, which includes:
 - a. specifications of the change detailed to the satisfaction of the NatHERS Administrator;
 - b. simulation test results or other rating data required to demonstrate that the User Interface Tool meets the requirements of the User Interface Protocol;
 - c. any changes that provide support or training material; and
 - d. free access to a complete, operational version of the updated User Interface Tool before that version is commercially released.
- 11.2 The User Interface Tool Provider must not release the updated User Interface Tool for public use until the NatHERS Administrator has approved the new Minor Version of the User Interface Tool that includes any General Updates, in writing.
- 11.3 Within 10 business days, or another period agreed by the parties, after receiving a notice under clause 11.1, the NatHERS Administrator must, in its absolute discretion, give written notice to the User Interface Tool Provider that it:
 - a. approves the proposed Minor Version that includes the General Update to the User Interface Tool and that it may be implemented; or
 - b. does not approve the proposed General Update to the User Interface Tool and that it may not be implemented.
- 11.4 In deciding whether to grant approval under clause 11.3, the NatHERS Administrator may consider whether the results generated by the User Interface Tool continue to comply with the User Interface Protocol and any other matter it considers relevant.

12. CYBER SECURITY

- 12.1 The User Interface Tool Provider must maintain appropriate cyber security systems in accordance with applicable legislation, guidelines and industry best practice standards to protect the operation of the User Interface Tool and all data and information that is input into, displayed on, processed, or stored by the User Interface Tool.
- 12.2 The User Interface Tool Provider must demonstrate the implementation of and adherence to all mandatory requirements, and consider any other requirements, that are specified in the User Interface Protocol in relation to cyber security, including that the extension of such obligations are imposed on, and must be demonstrated by, third or external parties using best endeavours.
- 12.3 The User Interface Tool Provider must provide notice to the NatHERS Administrator of any cyber security incidents that affect the User Interface Tool within 24 hours of becoming aware of an incident.
- 12.4 The User Interface Tool Provider must report any cyber security incidents that affect the User Interface Tool to the [Australian Cyber Security Centre](#) (ACSC) or otherwise as directed by the NatHERS Administrator or the ACSC.

13. USER INTERFACE SUPPORT

- 13.1 The User Interface Tool Provider must:
- maintain a Users' helpdesk;
 - with respect to commercial Users (that is, Users who pay a fee to the User Interface Tool Provider for use of the User Interface Tool or for generation of a Home Energy Rating Certificate) the helpdesk must, as a minimum, be able to receive email requests from such Users on the operation of the User Interface Tool and provide 80 percent of responses within two (2) business days, respond within five (5) business days to all requests, except where the User Interface Tool Provider is in a holiday shutdown period, and give adequate notice of any holiday shutdown periods to such Users;
 - publish a sufficiently detailed and up-to-date electronic user manual or help files that are freely accessible to Users while the User Interface Tool is being used;
 - keep the User Interface Tool user manual and help files, as applicable, up to date to reflect approved changes and updates to the User Interface Tool;
 - provide, on reasonable commercial terms, an operational version of the User Interface Tool and information about its use to Registered Training Organisations that can be used for the development and conduct of relevant training that is required by the NatHERS Administrator to become or remain an Assessor; and

- f. provide basic support to all Users.

14. GENERATING HOME ENERGY RATING CERTIFICATES

- 14.1 The User Interface Tool Provider must ensure that Home Energy Rating Certificates through use of the User Interface Tool and associated Certificate Portal, can only be generated when the NatHERS for existing homes assessment is undertaken using the Approved Settings.
- 14.2 The User Interface Tool Provider must ensure that Home Energy Rating Certificates can only be generated by an Assessor.
- 14.3 The User Interface Tool Provider must provide and ensure required fields (as specified in the User Interface Protocol) are populated in the User Interface Tool, and ensure that an Assessor enters their name and a valid Assessor accreditation number into the User Interface Tool or Certificate Portal in order to produce a Home Energy Rating Certificate.

15. ASSESSOR ACCREDITATION SERVICE PROVIDER (AASP)

- 15.1 To enable an AASP or its nominee to conduct quality assurance activities of its Assessors, the AASP will send a written request to the User Interface Tool Provider, or use any other method agreed with and facilitated by the User Interface Tool Provider (which may include providing the AASP the ability to access information directly in the User Interface Tool portal), to produce information with respect to any Assessor that is or was accredited by that AASP. The User Interface Tool Provider must, within five (5) business days of the request, give the AASP, and any person, organisation or government agency authorised by the AASP, free and full access to information that includes:
 - a. all Assessment Files and Home Energy Rating Certificates generated by the Assessor through use of the User Interface Tool and Certificate Portal;
 - b. all data and information in the material in clause 15.1a;
 - c. all relevant User Interface Tool versions; and
 - d. the applicable User Interface Tool user agreements.
- 15.2 The User Interface Tool Provider may require the AASP to enter a confidentiality and non-disclosure agreement on standard and reasonable terms consistent with clause 15.1 one business day prior to the User Interface Tool Provider providing the material and information to the AASP.

- 15.3 Without limiting the User Interface Tool Provider's obligations under clauses 9.9 and 9.10, if following the AASP's conduct of quality assurance activities, the AASP determines to suspend or terminate an Assessor's accreditation with the AASP, then the AASP may direct the User Interface Tool Provider, or use any other method agreed with and provided by the User Interface Tool Provider (which may include providing the AASP the ability to action directly in the User Interface Tool portal), to prevent the use of an accreditation number to generate Home Energy Rating Certificates. The User Interface Tool Provider must comply with the reasonable directions of the AASP within five (5) business days of receipt of the notice from the AASP. If the AASP subsequently reinstates the Assessor's accreditation, the AASP will promptly inform the User Interface Tool Provider in writing or through any other method agreed with and facilitated by the User Interface Tool Provider.
- 15.4 Without limitation to clauses 9 and 20, the User Interface Tool Provider must ensure it is a condition of the User Interface Tool User Provisions that each User must grant to the User Interface Tool Provider the rights and consents necessary for the User Interface Tool Provider to comply with its obligations under clauses 15.1 and 15.3.

16. NATHERS ADMINISTRATOR'S ACCESS TO DATA AND USER INTERFACE TOOL

- 16.1 To enable the NatHERS Administrator or persons appointed by the NatHERS Administrator to act on behalf of the NatHERS Administrator to undertake audits, quality assurance activities and investigations for NatHERS Integrity Purposes, the NatHERS Administrator will send a written request for information to the User Interface Tool Provider to produce information, or use any other method agreed with and facilitated by the User Interface Tool Provider (which may include providing the NatHERS Administrator the ability to access information directly in the User Interface Tool portal).
- 16.2 A request to the User Interface Tool Provider under clause 16.1 to produce information imposes an obligation on the User Interface Tool Provider to request information required for the purposes of clause 16.1 from agents, affiliates or third parties associated with the User Interface Tool Provider.
- 16.3 The User Interface Tool Provider, including its agents, affiliates or third parties, must within 10 business days of the request to produce information per clause 16.1 make available and provide access to the NatHERS Administrator and to any person, organisation or government agency that the NatHERS Administrator grants full and free access to information that includes:
- a. all Assessment Files and Home Energy Rating Certificates generated by the Assessor through use of the User Interface Tool and Certificate Portal;
 - b. all data and information in the material in clause 16.3a;
 - c. all relevant User Interface Tool versions; and
 - d. the applicable User Interface Tool user agreements.

- 16.4 The User Interface Tool Provider must provide reasonable assistance to the NatHERS Administrator and any person, organisation or government agency that is granted permission in writing by the NatHERS Administrator for NatHERS Integrity Purposes.
- 16.5 Without limiting the User Interface Tool Provider's obligations under clauses 9.9 and 9.10, if the NatHERS Administrator's conduct of quality assurance activities or investigations determine that incompetent, fraudulent or dishonest activities may have occurred, then the NatHERS Administrator may direct the User Interface Tool Provider to Disable the User's Account within the Certificate Portal or the User Interface Tool (or both), or use any other method agreed with and facilitated by the User Interface Tool Provider (which may include providing the NatHERS Administrator the ability to action directly in the User Interface Tool portal). The User Interface Tool Provider must comply with such direction from the NatHERS Administrator within five (5) business days of receipt of the notice from the NatHERS Administrator.
- 16.6 If the User Interface Tool Provider becomes aware of any incompetent, fraudulent or dishonest activities in connection with the NatHERS:
- a. the User Interface Tool Provider must immediately notify the NatHERS Administrator of such activities and provide all information requested by the NatHERS Administrator in connection with such activities; and
 - b. the NatHERS Administrator may exercise its rights under clause 9.
- 16.7 Without limitation to clauses 9 and 20, the User Interface Tool Provider must ensure that it is a condition of the User Interface Tool User Provisions that each User must grant to the User Interface Tool Provider and the NatHERS Administrator the rights and consents (including client consents) necessary for the User Interface Tool Provider to comply with its obligations under this clause 16.
- 16.8 Nothing in this Agreement limits the User Interface Tool Provider's obligation to share data with CSIRO in accordance with the User Interface Tool Provider's agreement with CSIRO to access AccuRate Enterprise for use of the Chenath Engine and, where applicable, the HStar Portal.

17. LIMITATION OF LIABILITY AND INDEMNITY

- 17.1 The NatHERS Administrator will not be liable for any loss or damage suffered by the User Interface Tool Provider, arising out of, or relating to, or in connection with:
- a. the accreditation of the User Interface Tool, the withdrawal of the accreditation of the User Interface Tool, or the use and commercialisation of the User Interface Tool and Certificate Portal; or
 - b. any variation to this Agreement in accordance with clause 23.

- 17.2 The NatHERS Administrator does not guarantee, and accepts no legal liability whatsoever arising from, or connected to, the accuracy, reliability, currency, or completeness of the results generated by the User Interface Tool and Certificate Portal.
- 17.3 Subject to clauses 17.4 and 17.5, the User Interface Tool Provider indemnifies and will hold harmless the NatHERS Administrator, its officers, employees and contractors from and against any:
- a. cost or liability incurred by the NatHERS Administrator;
 - b. loss or damage that would be suffered by the NatHERS Administrator, its officers, employees and contractors; or
 - c. losses (being liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party)) incurred in dealing with any claim against the NatHERS Administrator, including the cost of time spent, resources used or disbursements paid by the NatHERS Administrator,
- arising from either:
- d. a breach of this Agreement; or
 - e. an act or omission involving the fault on the part of the User Interface Tool Provider in connection with the Agreement (including in connection with the accreditation of the User Interface Tool and Certificate Portal).
- 17.4 The User Interface Tool Provider's obligation to indemnify the NatHERS Administrator, its officers, employees, and contractors will reduce proportionally to the extent any act or omission involving fault on the part of the NatHERS Administrator, its officers, employees, and contractors contributed to the claim, loss, or damage.
- 17.5 If the User Interface Tool Provider is the Commonwealth, CSIRO, or a State or Territory of Australia it is excluded from the obligation under clause 17.3 to indemnify the NatHERS Administrator, its officers, employees, and contractors. This clause does not exclude or reduce the liability of, or benefit to, the Commonwealth, CSIRO or the State or Territory of Australia that may arise by operation of the common law or breach of statute.

18. INSURANCE

- 18.1 Subject to clause 18.3, the User Interface Tool Provider must have and maintain during the Agreement Period:
- a. workers' compensation insurance as required by applicable law;

- b. public liability insurance covering legal liability (including liability assumed under contract) for loss or damage to property or injury or death to persons arising out of or in connection with the User Interface Tool Provider's activities and obligations under the Agreement for an insured amount of \$10 million per occurrence and not less than \$20 million in aggregate; and
 - c. either professional indemnity or errors and omissions insurance for an insured amount of \$5 million per occurrence and not less than \$10 million in aggregate.
- 18.2 The User Interface Tool Provider must, on request, provide to the NatHERS Administrator any relevant insurance policies and certificates of currency for inspection, by the date specified in the request.
- 18.3 If the User Interface Tool Provider is the Commonwealth, or a State or Territory of Australia, it may act as its own insurer.

19. USE OF NATHERS TRADEMARKS

- 19.1 The NatHERS Administrator grants to the User Interface Tool Provider a non-exclusive, revocable, royalty-free licence during the Agreement Period to:
- use the NatHERS trademarks detailed in the NatHERS Trade Mark Guidelines (Trade Mark Guidelines – Version 3 or as subsequently updated by the NatHERS Administrator) strictly in accordance with the terms set out in the NatHERS Trade Mark Guidelines; and
- a. grant sub-licences to use such trademarks only to Users who are Assessors in accordance with the terms set out in the NatHERS Trade Mark Guidelines.

20. RECORDS

- 20.1 During the Agreement Period, the User Interface Tool Provider must keep complete and proper records, books of account, documents, and information including without limitation copies of all Assessment Files and associated data entered by the User in relation to the User Interface Tool, the licensing to and use of the User Interface Tool by Users, and the User Interface Tool Provider's compliance with its obligations under the Agreement (collectively and not exhaustive, **Records**).
- 20.2 Upon written request and within a reasonable period, the User Interface Tool Provider will provide the NatHERS Administrator and any person, organisation or government agency granted permission by the NatHERS Administrator with access to (and where relevant, copies of) the Records which the NatHERS Administrator reasonably considers necessary to satisfy itself that the User Interface Tool Provider is continuing to comply with the requirements of the Agreement and that of the NatHERS Administrator.
- 20.3 The User Interface Tool Provider must securely retain the Records for seven (7) years.

21. RESPONSIBILITY FOR COSTS

- 21.1 The User Interface Tool Provider will be responsible for the costs of implementing any changes in its User Interface Tool, including any changes necessary to obtain or maintain the accreditation of the User Interface Tool and any changes required by any variations to the Agreement.
- 21.2 The User Interface Tool Provider will be responsible for all costs incurred by the User Interface Tool Provider in connection with its own administration of the Agreement.

22. NO OBLIGATION TO PROMOTE OR USE USER INTERFACE TOOL

- 22.1 Nothing in the Agreement places any obligation on the NatHERS Administrator to promote the User Interface Tool, engage the services of the User Interface Tool Provider, or to use the User Interface Tool.

23. VARIATION OF AGREEMENT

- 23.1 Subject to clauses 23.3 to 23.4, the Agreement may only be varied during the Agreement Period with the written agreement of both parties.
- 23.2 If the NatHERS Administrator, acting reasonably and with the approval of the NatHERS Steering Committee, determines that it is necessary to vary the terms and conditions that apply to all providers of User Interface Tools (including this Agreement) during the Agreement Period (other than any variations necessary to implement changes to the User Interface Tool which are subject to clauses 10 and 11), then the NatHERS Administrator will notify the User Interface Tool Provider in writing, providing details of the variations to the Agreement (**Agreement Variation Notice**).
- 23.3 Unless the User Interface Tool Provider provides written notice to the NatHERS Administrator within 20 business days of the date of the Agreement Variation Notice that it rejects the variations, the User Interface Tool Provider will be deemed to have consented to the variations set out in the Agreement Variation Notice, which will take effect at the expiry of 20 business days from the date of the Agreement Variation Notice.
- 23.4 If the User Interface Tool Provider rejects the variations detailed in the Agreement Variation Notice within the period set out in clause 23.3, then:
- the Agreement will continue on the same terms and conditions; or
 - at the end of six (6) months from the date of the Agreement Variation Notice (or such other period as agreed by the parties in writing), the Agreement will be terminated in accordance with clause 29.

24. CONFIDENTIALITY

- 24.1 Any information, data or documents provided by one party to the other in connection with the accreditation of the User Interface Tool or under the Agreement must be kept confidential in accordance with clause 24.
- 24.2 The NatHERS Administrator will not make commercial use of any information, data or documents provided by the User Interface Tool Provider or give access to the information to any other organisation to use such information for commercial use.
- 24.3 The NatHERS Administrator may publish statistical reports based upon the NatHERS for existing homes assessments produced by the User Interface Tool and Certificate Portal.
- 24.4 If the User Interface Tool Provider considers that certain information is commercially sensitive, the User Interface Tool Provider will notify the NatHERS Administrator in writing prior to providing the information to the NatHERS Administrator.
- 24.5 The obligations on the parties under clause 24.1 will not be taken to have been breached to the extent that information subject to clause 24.1:
- a. is information input by a User as part of completing a NatHERS for existing homes assessment and is disclosed by the NatHERS Administrator (or persons acting on the NatHERS Administrator's behalf) in accordance with the consents and agreements provided by the User to the NatHERS Administrator or AASP;
 - b. is disclosed by a party to its advisers or employees solely in order to comply with obligations, or to exercise rights, under the Agreement, provided that such advisers or employees are informed of the confidential nature of the information;
 - c. is disclosed to a party's internal management personnel, solely for NatHERS Integrity Purposes;
 - d. is disclosed by the NatHERS Administrator to their responsible Minister;
 - e. is disclosed by the NatHERS Administrator:
 - i. in response to a request by a House or a Committee of the Parliament of the Commonwealth;
 - ii. to the Auditor General, Ombudsman, Privacy Commissioner, Information Commissioner, Freedom of Information Commissioner or the National Data Commissioner; or
 - iii. for the purpose of sharing within the NatHERS Administrator, or with another Commonwealth, State or Territory government agency, where this serves the Commonwealth's, a State's, or a Territory's legitimate interests;

- f. is authorised or required by law to be disclosed;
- g. is authorised or required under the Agreement to be disclosed, including without limitation under clauses 15, 16 and 27 of these Terms and Conditions; or
- h. is in the public domain otherwise than due to a breach of clause 24.

25. PRIVACY

25.1 The User Interface Tool Provider must demonstrate the implementation of or adherence to all mandatory requirements and consider any other requirement that is specified in the User Interface Protocol in relation to privacy, including that the extension of such obligations are imposed on, and demonstrated by third or external parties using best endeavours.

25.2 The parties must, when dealing with Personal Information which is collected in connection with or via the User Interface Tool, Certificate Portal, or the Agreement:

- a. only use or disclose Personal Information for the purpose of the Agreement, such as the production of Home Energy Rating Certificates, NatHERS Integrity Purposes, records management, and the administration of the NatHERS;
- b. collect, hold, use, share, disclose or destroy any Personal Information in accordance with applicable Privacy Law (to the extent the Privacy Law is applicable to the party);
- c. not do any act or engage in any practice that would breach any Privacy Law (to the extent the Privacy Law is applicable to the party);
- d. if becoming aware of, or suspect that a party is subject or exposed to any actual or potential unauthorised access, use, modification or disclosure of Personal Information, must notify the other party within 10 business days of becoming aware (or such other period agreed by the parties in writing) and provide cooperation to the other party to assist them to make disclosures if required under Privacy Law; and
- e. ensure that they have up to date privacy policies and protocols regarding the handling of Personal Information, including the destruction or deidentification of information which is no longer required.

25.3 The User Interface Tool Provider must ensure that:

- a. Users are notified of the collection, use and disclosure of their Personal Information by the User Interface Tool Provider, the User Interface Tool, or the Certificate Portal for the purpose of the Agreement, such as the production of Home Energy Rating Certificates, NatHERS Integrity Purposes, records management, and the administration of the NatHERS. Users must be notified that their Personal Information may be disclosed to the AASPs, the NatHERS Administrator, and any person, organisation or government agency granted permission by the AASPs or the NatHERS Administrator. Users must be

notified if their Personal Information will, or is likely to be, stored using third party applications or servers, including if the third parties will have access to their Personal Information and if those third parties are located overseas; and

- b. Users obtain from clients, for whom the Users undertake a NatHERS for existing homes assessment through the use of the User Interface Tool or Certificate Portal, appropriate consent to the collection, use and disclosure of the client's Personal Information for the purpose of the Agreement, such as the production of Home Energy Rating Certificates, NatHERS Integrity Purposes, records management, and the administration of the NatHERS. The clients must be notified that their Personal Information may be disclosed to the AASPs, the NatHERS Administrator, and any person, organisation or government agency granted permission by the AASPs or the NatHERS Administrator. The clients must be notified if their Personal Information will, or is likely to be, stored using third party applications or servers, including if the third parties will have access to their Personal Information and if those third parties are located overseas.

25.4 The User's confirmation that the consents detailed in clause 25.3 have been obtained is to be recorded by the User Interface Tool or Certificate Portal prior to the generation of a Home Energy Rating Certificate.

26. NOTICE

26.1 All notices, approvals, consents, or other communications under the Agreement must be provided in writing to:

- a. in the case of the User Interface Tool Provider, the User Interface Tool Provider Representative; and
- b. in the case of the NatHERS Administrator, the contact details provided in the Accreditation Notice, or such other contact details as are provided by the NatHERS Administrator from time to time.

26.2 Such notice must be either:

- a. delivered to the property address of the receiver;
- b. sent by prepaid post to the property address of the receiver; or
- c. sent by email to the email address of the receiver.

26.3 Such notice is taken to be received if:

- a. given or served by hand, at the time of delivery;
- b. posted, on the third business day after posting (or the seventh business day if posted to or from a place outside Australia); or
- c. emailed at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth).

27. DISPUTE RESOLUTION

- 27.1 If a dispute arises in relation to the Agreement (**Dispute**), a party must comply with clause 27 before commencing arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief, that party must follow clause 27.
- 27.2 A party claiming a Dispute has arisen must give the other party notice setting out details of the Dispute.
- 27.3 The parties will work together to resolve Disputes as follows:
- during the period of 10 business days after notification of a Dispute is given under clause 27.2 (or longer period if the parties agree in writing) the parties shall attempt to resolve the Dispute by negotiation at the officer level.
 - if the parties cannot resolve the Dispute at the officer level within that period, each party to the Dispute must use its reasonable efforts through a meeting of CEOs, agency heads, or equivalent level, to resolve the Dispute.
 - if the parties cannot resolve the Dispute within 10 business days at the CEO, agency head or equivalent level, they must refer the Dispute to a mediator if one of them requests.
- 27.4 If the parties to the Dispute cannot agree on a mediator within five (5) business days after a request under clause 27.3, the chairperson of the Resolution Institute (ABN 69 008 651 232) or the chairperson's nominee will appoint a mediator.
- 27.5 The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing. Unless agreed by the mediator and the parties, the mediation must be held within 15 business days of the request for mediation in clause 27.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.
- 27.6 Any information or documents disclosed by a party under clause 27:
- must be kept confidential; and
 - may only be used to attempt to resolve the Dispute.
- 27.7 Each party to a Dispute must pay its own costs of complying with clause 27. The parties to the Dispute must equally pay the costs of any mediator.
- 27.8 A party to a Dispute may terminate the dispute resolution process by giving notice to the other party after it has complied with clauses 27.1 to 27.5. Clauses 27.6 and 27.7 survive termination of the dispute resolution process.
- 27.9 If a party to a Dispute breaches any of clauses 27.1 to 27.8, the other party does not have to comply with those clauses in relation to the Dispute.

27.10 Despite the existence of a Dispute, the parties must continue to perform their obligations under the Agreement unless requested in writing by the NatHERS Administrator not to do so.

28. COMPLIANCE WITH THE COMMONWEALTH SUPPLIER CODE OF CONDUCT

28.1 For the purposes of this clause, 'Commonwealth Supplier Code of Conduct' or 'Code' means the Commonwealth Supplier Code of Conduct, as published on 1 July 2024, as updated from time to time.

28.2 The User Interface Tool Provider must comply with, and ensure that its officers, employees, agents and subcontractors comply with, the Code in connection with the performance of this Agreement.

28.3 The User Interface Tool Provider must:

- a. periodically monitor and assess its, and its officers', employees', and agents' compliance with the Code; and
- b. on request from the NatHERS Administrator, promptly provide information regarding:
 - i. the policies, frameworks, or systems it has established to monitor and assess compliance with the Code; and
 - ii. the User Interface Tool Provider's compliance with clause 28.2.

28.4 The User Interface Tool Provider must immediately issue the NatHERS Administrator a written notice on becoming aware of any breach of clause 28.2. The written notice must include a summary of the breach, the date that the breach occurred, and details of the personnel involved.

28.5 Where the NatHERS Administrator identifies a possible breach of clause 28.2, it may issue the User Interface Tool Provider a written notice, and the User Interface Tool Provider must, within three (3) business days of receiving the written notice, either:

- a. where the User Interface Tool Provider considers a breach has not occurred, advise the NatHERS Administrator that there has not been a breach and provide information supporting that determination; or
- b. where the User Interface Tool Provider considers that a breach has occurred, issue a written notice under clause 28.4 and otherwise comply with its obligations under clause 28.

28.6 Notwithstanding clause 28.5, the NatHERS Administrator may notify the User Interface Tool Provider in writing that it considers that the User Interface Tool Provider has breached clause 28.2, in which case the User Interface Tool Provider must issue a written notice under clause 28.4 and otherwise comply with its obligations under clause 28.

28.7 A failure by the User Interface Tool Provider to comply with its obligations under any part of this clause will be a material breach of the Agreement.

28.8 Nothing in this clause or the Code limits, reduces, or derogates from the User Interface Tool Provider's other obligations under the Agreement. The NatHERS Administrator's rights under this clause are in addition to and do not otherwise limit any other rights the NatHERS Administrator may have under the Agreement. The performance by the User Interface Tool Provider of its obligations under this clause will be at no additional cost to the NatHERS Administrator.

28.9 The User Interface Tool Provider agrees that the NatHERS Administrator or any other Commonwealth agency may take into account the User Interface Tool Provider's compliance with the Code in any future approach to market or procurement process.

29. TERMINATION FOR CAUSE

29.1 The NatHERS Administrator may issue a written notice to immediately terminate this Agreement if:

- a. the User Interface Tool Provider breaches a material term of this Agreement and the breach is not capable of remedy;
- b. the User Interface Tool Provider does not remediate a material breach of this Agreement, which is capable of remediation, within the period specified by the NatHERS Administrator in a written notice of default issued to the User Interface Tool Provider; or
- c. if the User Interface Tool Provider rejects an Accreditation Notice or an Agreement Variation Notice.

30. TERMINATION FOR CONVENIENCE

30.1 In addition to any other rights the NatHERS Administrator has in relation to the Agreement, the NatHERS Administrator may at any time terminate this Agreement by notifying the User Interface Tool Provider.

30.2 None of the other provisions of this Agreement limit or otherwise affect the NatHERS Administrator's ability to terminate this Agreement under this clause.

31. GOVERNING LAW

31.1 The laws of the Australian Capital Territory apply to the Agreement.

31.2 The courts of the Australian Capital Territory shall have non-exclusive jurisdiction to decide any matter arising out of the Agreement.

32. SEVERABILITY

32.1 If any clause or provision of this Agreement is held or made void, unenforceable, illegal or invalid by a court decision, statute or the common law, or shall be otherwise rendered invalid, the remainder of this Agreement shall not be affected.

33. SURVIVAL

33.1 Any term of the Agreement that is expressed or by its nature is intended to survive expiry or termination of the Agreement survives expiry or termination of the Agreement. Without limitation to the foregoing, the following clauses will survive the expiry or termination of the Agreement: clauses 6 (User Interface Tool Versions), 9 (User Interface Tool User Provisions), 15 (Accredited Assessor Services Provider (AASP)), 16 (NatHERS Administrator's Access to Data and User Interface Tool), 17 (Limitation of Liability and Indemnity), 18 (Insurance), 20 (Records), 24 (Confidentiality), 25 (Privacy), 26 (Notice), 27 (Dispute Resolution), 32 (Severability), and clause 33 (Survival).

APPENDIX 1

USER INTERFACE TOOL USER PROVISIONS

The User Interface Tool Provider must ensure that the User Interface Tool User Provisions that govern the use of the User Interface Tool contain the following terms and conditions:

Compliance

1. By accessing or using the User Interface Tool, the User agrees that the User has read, understands, and agrees to be bound by these User Interface Tool User Provisions.
2. The User must comply with the following NatHERS documents (as amended and updated from time to time):
 - a. the Technical Note; and
 - b. the NatHERS Trade Mark Guidelines (Trade Mark Guidelines – Version 3 or as subsequently updated by the NatHERS Administrator).
3. The User must not alter a Home Energy Rating Certificate after it is generated.
4. The User expressly agrees to fully participate in and cooperate with any investigation or audit conducted by the NatHERS Administrator (or persons appointed by the NatHERS Administrator to act on behalf of the NatHERS Administrator) of a NatHERS for existing homes assessment and the User's activities in relation to the NatHERS.

Privacy

5. For the purpose of quality assurance or audit activities, the User agrees for the User Interface Tool Provider and associated third party software applications (including those located overseas) to collect their Personal Information. Further information and examples of Personal Information that could be collected are provided in the NatHERS for existing homes Client Information and Consent Form. The User's Personal Information may also be disclosed to the NatHERS Administrator or persons appointed by the NatHERS Administrator to act on its behalf. The User Interface Tool Provider may also provide to the NatHERS Administrator, or persons appointed by the NatHERS Administrator to act on its behalf, material relevant to the User's use of the User Interface Tool, the NatHERS for existing homes assessments performed, and the Home Energy Rating Certificates generated.
6. The User notes that if they do not consent to Personal Information being collected, used, and disclosed (where required), it will not be possible for the User to access and use the User Interface Tool.
7. The User notes that their Personal Information will be handled in accordance with [insert User Interface Tool Provider's Privacy Policy], the Australian Government Department of Climate Change, Energy, the Environment and Water's Privacy Policy and the *Privacy Act 1988* (Cth).

8. The User notes that their Personal Information may be disclosed where required or authorised by law.

Collection of Client Information

9. The User performing a NatHERS for existing homes assessment must inform their client that they will collect Personal Information, including their name, email address, telephone number, ABN (where applicable), the NatHERS for existing homes assessment performed and documentation used for the NatHERS for existing homes assessment. This may include information that could be considered sensitive, such as scans, photographs, videos, appliance invoices and building plans that could contain information or an opinion about a client's personal or family life, financial status, or cultural or religious background and practices. This information may be disclosed to:
 - a. User Interface Tool Providers and associated third party software applications and platforms, including those located overseas, that support the generation of a NatHERS for existing homes assessment, Home Energy Rating Star Rating, and Home Energy Rating Certificate; and
 - b. the NatHERS Administrator, applicable Assessor Accreditation Service Providers (AASPs), or persons appointed to act on their behalf, for the purposes of quality assurance, investigation and audits including to contact the client in relation to any findings relevant to the NatHERS for existing homes assessment.
10. The User must obtain the client's consent for the collection of their Personal Information and must record that this consent was obtained in the User Interface Tool.

Use of User Interface Tool or Certificate Portal

11. The User:
 - a. must not access or use the User Interface Tool or Certificate Portal in any way that it knows or ought to reasonably know:
 - i. contravenes any law;
 - ii. is false, offensive, indecent, objectionable, harassing, obscene, pornographic, threatening, abusive, defamatory, libellous, fraudulent, tortious, or invasive of another's privacy or constitutes a breach of a person's legal rights (including Intellectual Property Rights or rights in confidential information);
 - iii. violates these User Interface Tool User Provisions; or
 - iv. is detrimental to the User Interface Tool or Certificate Portal, including if that access or use has or could damage, disable, or impair any servers, networks or other resources used by the User Interface Tool Provider, the NatHERS Administrator, an AASP, or any of their third-party service providers or customers;

- b. must not have, and must not create, access, or use an Account to access or use the User Interface Tool or Certificate Portal if any of their Accounts (including an account for another User Interface Tool) is currently Disabled (unless otherwise permitted by the User Interface Tool Provider);
- c. acknowledges and agrees that the creation of multiple Accounts, by the same User to access or use the User Interface Tool or Certificate Portal, constitutes a breach of the User Interface Tool User Provisions if the User's Account (including an account for another User Interface Tool) is currently Disabled; and
- d. must not engage in any action or attempt to circumvent any requirements to pay any applicable fees (including rendering any invoice in a manner designed to circumvent requirements to pay applicable fees).

Miscellaneous

- 12. The User acknowledges and agrees that the User Interface Tool Provider has responsibilities to the NatHERS Administrator and the AASPs. The User Interface Tool Provider may be directed by the NatHERS Administrator or an AASP to take certain steps or actions (including in relation to Disabling a User's Account access and use of the User Interface Tool or the Certificate Portal). Where applicable, the User must comply with those steps or actions as directed by the User Interface Tool Provider (including those requested by or via the NatHERS Administrator) and may direct inquiries as to these steps or actions to the NatHERS Administrator.
- 13. The User agrees to comply with any notification provided by the User Interface Tool Provider (including in respect of any warning notice or suspension notice such as those which may be issued by the User Interface Tool Provider or the NatHERS Administrator to direct the User Interface Tool Provider to undertake the remedial or enforcement actions).
- 14. The NatHERS Administrator may enforce any right of the User Interface Tool Provider under these User Interface Tool User Provisions on behalf of the User Interface Tool Provider.
- 15. Defined terms in the User Interface Tool User Provisions have the same meaning as in the User Interface Accreditation Terms and Conditions for NatHERS for existing homes.

Termination, Disabling, Suspension or Investigation of a User Account

- 16. The User acknowledges that the NatHERS Administrator may direct the User Interface Tool Provider to suspend, Disable, terminate or investigate a User's Account under circumstances where Detrimental Use may be suspected or identified.
- 17. The User acknowledges and agrees that the User Interface Tool Provider may Disable or terminate a User's Account:
 - a. including the right to use the User Interface Tool and Certificate Portal (including forfeiting of the User's ability to generate a Home Energy Rating Certificate) if the User breaches the User Interface Tool User Provisions; and
 - b. under circumstances where Detrimental Use is identified or if directed by the NatHERS Administrator or AASP.

18. The User Interface Tool Provider, the NatHERS Administrator, nor an AASP will not be held liable for any loss or damage incurred to the User, its agents or affiliates in the event that any such Account is Disabled or terminated.

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