



DESIGN FOR PERFORMANCE AGREEMENT

Version 2.1 –May 2024

PROJECT DETAIL FORM

Please complete all fields highlighted in the document and return the completed, signed and unlocked Design for Performance Agreement to the Scheme Administrator ('CIBSE Certification Ltd):
'epc@cibsecertification.org'

PROJECT DETAILS		
Client/Developer*		
Project Name		
Project address (Number, Street, City and Postcode)		
Project type	Choose an item.	
Short description of Project		
Average Net Internal Floor Area (NIA) (m ²)		
DESIGN FOR PERFORMANCE PROJECT DETAILS		
Space Type and Rating Scope	Choose an item.	
Rating Tool	Energy for Offices	
Target Rating	Choose an item.	
Planned Completion Date (DD/MM/YYYY)	Click or tap to enter a date.	
Planned Data Collection Start Date** (DD/MM/YYYY)	Click or tap to enter a date.	
APPLICANT DETAILS		
Company / Trust name		
Registered Company No.		
VAT Number		
Postal Address		
Name of Applicant's contact		
Applicant's email address (for billing purposes)		

Telephone Number	
PO Number (if applicable)	
The Applicant is a Trust company and wishes to benefit from Schedule 2 (Not Applicable if Applicant is not a Trust)	

*(to be displayed on the project's rating on the website)

**please note: the Planned Data Collection Start Date must follow the guidance on commencement of the Rating Period in Clause 3.2.1.(d) in the Rules for Energy for Offices.

REPRESENTATIVE DETAILS (only to be completed if the Applicant wishes to appoint an external representative to act on its behalf – see clause 22)	
Company name of Representative	
Name of Representative's contact	
Representative's Email address	
SCHEME ADMINISTRATOR DETAILS	
Contact: NABERS UK Team	Subject: Design for Performance Project Registration
Postal address	Request via email or by post to 222 Balham High Road, London SW12 9BS
Contact email address	epc@cibsecertification.org

For CIBSE Certification Ltd use only	
<i>Agreement number</i>	
<i>Rules version number</i>	v2.1
<i>Guide to Design for Performance version number</i>	v2.1
<i>Agreement Date</i>	

ACKNOWLEDGEMENT

The Applicant acknowledges that Design for Performance Agreements, while regulated by specific rules developed by the Scheme Administrator, also require discretion and judgment on the part of the Scheme Administrator. The decision whether to grant or deny certification to a Project will be based on the results of an assessment by the Scheme Administrator of the Independent Design Review Report along with any other information that the Scheme Administrator may reasonably require or use to determine the appropriateness of awarding a Design Reviewed Target Rating for the Project. The Scheme Administrator will act reasonably in exercising any such discretion or

judgment.

This Design for Performance Agreement has been entered into by the Parties on the Agreement Date.

Executed as an agreement, on behalf of CIBSE Certification Ltd, by:

Executed as an agreement, on behalf of [Name of Applicant] by:

.....
Signature of CIBSE Certification Ltd Representative

.....
Signature of authorised individual

Name of Certification Ltd Representative

On (date):

Name of authorised individual in full

TERMS AND CONDITIONS

BACKGROUND

- A. NABERS UK is an environmental rating scheme, administered by the CIBSE Certification Ltd (the Scheme Administrator). The NABERS UK Energy for Offices Rating aims to stimulate market recognition and demand for office buildings with improved energy performance. It allows building owners, managers and tenants to understand the energy impact of their buildings in operation, and drive improvements over time.
- B. The Scheme Administrator has developed an Agreement which may be entered into by property owners and developers to encourage such owners and developers to design and construct buildings to deliver targeted energy performance in operation (**Design for Performance Agreements**).
- C. Design for Performance Agreements are available for new or refurbished buildings for the following Rating Tools: Energy for Offices.
- D. This Agreement qualifies as a Design for Performance Agreement. It establishes the process that the Applicant is required to follow to obtain a Design Reviewed Target Rating. This Agreement also sets out the basis on which the Applicant may promote its Target Rating and Design Reviewed Target Rating and use the Trade Marks.
- E. The parties intend that following the Completion Date, the Applicant will appoint an Independent Accredited Assessor to obtain a Certified Performance Rating which, once awarded, will replace the Design Reviewed Target Rating.

1. INTERPRETATION

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

Accredited Assessor	An Independent person authorised by the Scheme Administrator to assess and lodge an application for a Certified Performance Rating with the Scheme Administrator in accordance with the Rules and applicable process .
Agreement	This Agreement, including all schedules to this Agreement.
Agreement Date	The date of signature by the Scheme Administrator of this Agreement.
Agreement Fee	The fee payable to the Scheme Administrator to obtain a signed Design for Performance Agreement as specified by the Scheme Administrator on the Website as at the Agreement Date.
Applicant	The entity identified in the Project Detail Form.
Authority	Any governmental, statutory, public, local government or other authority or body having jurisdiction.
Brand Guidelines	The brand guidelines as at the Agreement Date as displayed on the Website.
Business Day	A day which is not Saturday, Sunday or a UK public holiday.
Certified Performance Rating	A rating of zero to six stars that may be awarded by the Scheme Administrator, having assessed the actual operational performance of a Space Type following the collection of data starting from the Data Collection Start Date.
Completion Certificate	A document issued by the building control body providing formal evidence that the building works have been approved and that, in so far as it is reasonable to determine, the works have been carried out in accordance with the building regulations and that the building is suitable for occupation (sometimes referred to as Final Certificate).
Confidential Information	Any non-public information relating to the operations, affairs or business of either party to this Agreement which is provided by or on behalf of a party to the other party to this Agreement or of which either party becomes aware pursuant to this Agreement.
Data Collection Start Date	The date on which relevant data starts being collected for the purposes of obtaining a Certified Performance Rating for the Project.
Design Reviewed Target Rating	A rating of four to six stars, reflecting the estimated operational performance of a Space Type that may be awarded by the Scheme Administrator following an Independent Design Review report.
Design Reviewed Target Rating Certificate	A certificate awarded to the Applicant by the Scheme Administrator to confirm the Design Reviewed Target Rating that has been obtained for the Project.
Design Reviewed Target Rating Licence Period	The period during which the Applicant may exercise the Design Reviewed Target Rating Rights in Schedule 1.
Design Reviewed Target Rating Rights	The rights as set out in Schedule 1 that may be exercised by the Applicant once it obtains a Design Reviewed Target Rating.
Guide	The <i>Guide to Design for Performance</i> which is available for download from the Website .

Independent	<p>The Reviewer or Accredited Assessor (as the case may be) must ensure independence by not having:</p> <ul style="list-style-type: none"> • any direct or indirect involvement with the design, construction or commissioning of the Project; nor • any direct or indirect interest (pecuniary or otherwise) in any part of the Project. <p>Further details on the activities a Reviewer is permitted to undertake for the Project are included within the Guide.</p>
Independent Design Review	An independent design assessment of the Project undertaken by a Reviewer on the Independent Design Review Panel that results in the production of an Independent Design Review Report, conducted at a sufficiently early stage in the project to allow major changes to the design, as set out in the Guide.
Independent Design Review Panel	Panel of Reviewers approved to conduct Independent Design Reviews. Panel members (Reviewers) are reviewed and approved by Certification Ltd via an open application process.
Independent Design Review Report	The report prepared in respect of the Independent Design Review, in accordance with the <i>Guide to Design for Performance</i> . A report template is made available to the Reviewer by the Scheme Administrator to provide the Applicant with a standardised, consistent Independent Design Review Report.
Law	Includes any requirement of any statute, regulation, proclamation, ordinance or by-law, present or future.
Marketing Materials	All marketing, promotional and advertising materials relating to the Project created by or on behalf of the Applicant, its agents or contractors including website and social media posts.
NABERS UK	The scheme responsible for the administration and certification of NABERS ratings in the UK.
NABERS Intellectual Property (IP)	Materials including the Rating Tool calculators and Rules, Design for Performance Guide and any other intellectual property licensed to the Scheme Administrator in relation to NABERS UK.
Project	The project described in the Project Detail Form.
Project Progress Report	A document issued to the Scheme Administrator every quarter or on a regular basis as defined, once data collection has commenced. The Report highlights progress in monitoring energy performance and provides commentary on the anticipated ability to achieve the Target Rating. The minimum requirements of Project Progress Reports are defined within the Guide.
Rating Achievement Plan	A document that sets out how the design intent, in relation to energy performance, is going to be maintained from design through

to occupation and rating measurement, as defined within the Guide.

Rating Scope	For offices: base building, whole building or tenancy and associated rating coverage according to the Rules.
Rating Tool	The NABERS rating tools that may be used for the purposes of a Target Rating or Design Reviewed Target Rating being as at the Agreement Date: <ul style="list-style-type: none"> - Energy for Offices
Representative	The entity (if any) nominated by the Applicant as its representative, specified in the Project Detail Form.
Reviewer	The person who undertakes the Independent Design Review and writes the Independent Design Review Report, selected from Independent Design Review Panel.
Rules	The NABERS rules applicable to the relevant Space Type as published on the Website as at the Agreement Date. For Energy for Office ratings these are: <ul style="list-style-type: none"> - NABERS UK The Rules – Energy for Office v2.1 - NABERS UK The Rules – Metering and Consumption v2.1
Scheme Administrator	The entity responsible for administering, managing, and developing NABERS UK, being as at the Agreement Date, Certification Ltd.
Space Type	A category of building, or part of a building, which is able to have its operational energy performance assessed through a NABERS rating. Space types only include offices at present.
Simulation Report	The report which sets out a realistic estimate of the operational performance of the Project, arranged and paid for by the Applicant, in accordance with the Guide.
Simulator	The person who undertakes the Simulation Report.
Status	The official status of the Target Rating from time to time as determined by the Scheme Administrator from time to time. The possible status identifiers are set out in Schedule 1.
Target Rating	An initial rating of four to six stars estimating the likely Design Reviewed Target Rating for the Project (as entered in the Project Detail Form).
Target Rating Licence	
Period	The period during which the Applicant may exercise the Target Rating Rights as set out in Schedule 1.

Target Rating Rights	The rights set out in Schedule 1 that may be exercised by the Applicant once it has paid the Agreement Fee.
Trade Marks	Any trade mark(s) associated with NABERS or NABERS UK that are owned by the scheme owner whether registered or unregistered.
Website	The NABERS UK website currently located at https://www.cibsecertification.co.uk/

2. PAYMENT

- a. In consideration of the licences granted to the Applicant under this Agreement, the Applicant must pay the Agreement Fee listed on the [CIBSE Certification website](#) to the Scheme Administrator within 30 days of receipt of an invoice from the Scheme Administrator.
- b. The Scheme Administrator may invoice the Applicant for the Agreement Fee on or at any time after the Agreement is entered into by the parties.
- c. The Applicant is solely responsible for the performance of the Applicant's obligations under this Agreement, including any monies payable to third parties (including all subcontractors, the Simulator, Reviewer and Accredited Assessor) in performing its obligations under this Agreement.
- d. All charges quoted on the invoice are exclusive of Value Added Tax for which the Applicant shall be additionally liable at the applicable rate.
- e. The Applicant acknowledges that the Agreement Fee is not refundable under any circumstance, and the Applicant will not be entitled to recover any or all of the Agreement Fee that has been paid to the Scheme Administrator.

3. TERM

This Agreement commences on the Agreement Date and expires on the date on which a Certified Performance Rating is awarded to the Applicant for the Project, unless terminated earlier in accordance with its terms.

4. TARGET RATING

- a. From the Agreement Date and for the Target Rating Licence Period, provided that the Agreement Fee has been paid by the Applicant in full, the Applicant may exercise the Target Rating Rights.
- b. Subject to clause 5 below, the Target Rating for the Project may be changed during the Target Rating Licence Period only by agreement between the parties in writing.
- c. The Applicant must, as soon as practical following the Agreement Date, notify relevant consultants and contractors involved in the design, construction, commissioning and management of the Project in writing of the Target Rating and requirements of the Applicant under this Agreement.

5. SIMULATION REPORT

- a. The Applicant must appoint a suitably qualified and experienced Simulator to prepare a Simulation Report for the Project, as specified in the Guide.
- b. Once the Simulation Report has been provided by the Simulator, the Applicant must notify the Scheme Administrator if it wishes to change the Target Rating.

6. INDEPENDENT DESIGN REVIEW

- a. The Applicant must:
 - i. appoint a Reviewer to conduct an Independent Design Review and prepare an Independent Design Review Report for the Project, as defined within the Guide. The Reviewer appointed must be:
 1. Independent; and
 2. included in the NABERS UK Independent Design Review Panel list (provided on the Website) at the Agreement Date or the date of appointment; and
 - ii. provide the Reviewer with all relevant information and documentation specified in the Guide and reasonably requested by the Reviewer to complete the Independent Design Review, including the Rating Achievement Plan, Simulation Report and all Project design documentation; and
- b. As set out in the Guide, the Independent Design Review should be conducted at a sufficiently early stage in the project, i.e. before the design is finalized, to allow major changes to the design
- c. The Applicant must provide a copy of the Independent Design Review Report to the Scheme Administrator promptly after it is received by the Applicant.

7. DESIGN REVIEWED TARGET RATING

- a. After receiving the Independent Design Review Report, the Scheme Administrator will decide at its sole discretion, whether to grant or deny a Design Reviewed Target Rating.
- b. Provided that the Applicant has complied with all of its obligations under this Agreement, the Scheme Administrator may award the Applicant a Design Reviewed Target Rating.
- c. Provided that the Independent Design Review Report is unsatisfactory, the Scheme Administrator may initiate a discussion with the Applicant following the review of the Independent Design Review Report.

8. CERTIFIED PERFORMANCE RATINGS

- a. The Applicant must notify the Scheme Administrator if the actual Data Collection Start Date or Completion Date differs from the Planned Data Collection Start Date or Planned Completion Date (as the case may be) as detailed in the Project Detail Form.
- b. The Applicant must provide the Scheme Administrator with a Project Progress Report on the first Monday of every three months from the actual Data Collection Start Date, as detailed in the Guide.
- c. The Applicant must arrange and pay for an Independent Accredited Assessor to conduct, lodge and obtain a Certified Performance Rating for the Project.
- d. The Applicant must notify the Scheme Administrator, and relevant consultants and contractors involved in the delivery and operation of the Project, within 60 days of the Certified Performance Rating being obtained.
- e. The Applicant should notify all companies lawfully occupying the building when the

Certified Performance Rating has been obtained.

- f. For the avoidance of doubt, no Target Rating or Design Reviewed Target Rating Rights may be exercised after the first Certified Performance Rating has been awarded for the Project.
- g. Subject to paragraph (h) below, once a Certified Performance Rating is obtained, the Scheme Administrator can update the final status of the Project on the Website.
- h. If the Certified Performance Rating awarded for the Project results in a star rating result that is lower than the Design Reviewed Target Rating, the Applicant may request that the Scheme Administrator delays publication of the final Status for a period of up to 16 months by completing and returning the form in Schedule 3.

9. TARGET RATING RIGHTS AND DESIGN REVIEWED TARGET RATING RIGHTS

- a. The Applicant must exercise its Target Rating Rights and Design Reviewed Target Rating Rights (if any) in accordance with this clause 9 and all other provisions of this Agreement.
- b. The Applicant must comply with the Brand Guidelines at all times.
- c. The Applicant acknowledges and agrees that its rights to use the Trade Marks as specified in Schedule 1 are non-exclusive, non-assignable (unless this Agreement is novated in accordance with clause 15.2(a)) and subject to paragraph 9(g) non-sublicensable.
- d. The Applicant may only use the Trade Marks as permitted by Schedule 1 and at all times only for the purpose of promoting and advertising that the Project has obtained the relevant Target Rating or Design Reviewed Target Rating (as the case may be).
- e. The Applicant's use of the Target Rating, Design Reviewed Target Rating, Trade Marks and the Design Reviewed Target Rating Certificate must not and none of the Marketing Materials may:
 - i. imply or infer that the Applicant or the Project is officially associated with NABERS, administers NABERS, owns the Trade Marks or is endorsed by the Scheme Administrator or NABERS (beyond the endorsement given by way of the Target Rating or Design Reviewed Target Rating);
 - ii. be false, confusing, misleading or deceptive (or be framed in such a way that might be false, confusing, misleading or deceptive) including by leading any third party to believe or suspect that the Applicant or the Project has been awarded a Certified Performance Rating for the Project;
- f. The Applicant must not:
 - i. use any variation, alteration or representation of any Trade Marks or logos provided by the Scheme Administrator; nor
 - ii. use any Trade Marks or logos in any way that may bring the Scheme Administrator, scheme owner or NABERS into disrepute.
- g. The Applicant may authorise the use of the Trade Marks or logos by third parties solely for the purpose of preparing or publishing advertising and promotional or Marketing Materials for the Project, provided that such use is consistent with the terms of this Agreement. For the avoidance of doubt, sublicences under this paragraph (g) may not be given under any circumstances to subcontractors or consultants involved in the design or construction of the Project (including suppliers of materials for the Project).
- h. For the avoidance of doubt, the Applicant may not use the Trade Marks in any context or for any purpose:
 - i. if it has not obtained a Target Rating or a Design Reviewed Target Rating;

- or
- ii. once the Target Rating Licence Period or the Design Reviewed Target Rating Licence Period (as applicable) expires unless authorised to do so pursuant to the Certified Performance Rating terms and conditions.

10. CEASING USE OF TRADE MARKS, TARGET RATINGS AND DESIGN REVIEWED TARGET RATINGS

- a. If:
 - i. the Scheme Administrator revises a Target Rating or a Design Reviewed Target Rating;
 - ii. the Target Rating Licence Period or Design Reviewed Target Rating Licence Period (as the case may be) expires; or
 - iii. this Agreement is terminated or expires,

the Applicant must as soon as reasonably practicable cease use of and take reasonable steps to withdraw all Marketing Materials (which, for the purposes of this clause 10 includes any signs or certificates on display at any location) referring to or featuring the Trade Marks, Target Rating and/or Design Reviewed Target Rating (as the case may be).

- b. Where clause 10(a)(i) applies, the Applicant may replace those withdrawn materials with Marketing Materials referring to or featuring the updated Target Rating or Design Reviewed Target Rating (as the case may be).
- c. The Scheme Administrator acknowledges that if the Applicant instigates the withdrawal of Marketing Materials in accordance with this clause, such withdrawal may not be effective immediately.

11. INTELLECTUAL PROPERTY

- a. The Applicant acknowledges and agrees that:
 - i. the Trade Marks constitute valuable intellectual property licensed to the Scheme Administrator and are protected by Law; and
 - ii. any unauthorised use of the Trade Marks constitutes both infringement of the Scheme Administrator's intellectual property and a breach of this Agreement.
- b. All rights not expressly granted under this Agreement are reserved by the Scheme Administrator, and no licence is granted for the use of the Trade Marks for any purpose beyond the uses set forth in this Agreement
- c. The Applicant agrees that the Scheme Administrator retains all intellectual property and other proprietary rights in the NABERS IP and agrees not to use NABERS IP except in accordance with this Agreement.
- d. The Applicant must not engage in or support any action, claim, opposition or challenge to the NABERS IP in any jurisdiction.
- e. Any permitted use by the Applicant of the NABERS IP and the goodwill associated with them shall apply to the sole benefit and advantage of the Scheme Administrator.
- f. The Applicant acknowledges that the NABERS IP and the associated goodwill possess special, unique and extraordinary characteristics, which make difficult the assessment of monetary damages that the Scheme Administrator would sustain as a result of unauthorised use of the NABERS IP. The Applicant recognises that the Scheme Administrator would suffer irreparable injury by such unauthorised use and agrees that injunctive and other equitable relief is appropriate in the event of a breach by the Applicant of any of the terms of this Agreement. Such remedy shall not be exclusive of any other remedies available to the Scheme Administrator, nor shall it be deemed

an election of remedies by the Scheme Administrator.

- g. The Applicant agrees that it will not reproduce, display or distribute any NABERS IP or any documents provided to it in connection with this Agreement in any way for any public or commercial purpose, including display on a website or in a networked environment unless expressly authorised to do by the Scheme Administrator or otherwise in accordance with this Agreement.

12. PUBLICITY RIGHTS

- a. On and from the Agreement Date without limit in time (including beyond expiry or termination of this Agreement), the Scheme Administrator may at its discretion publish on the Website:
 - i. the Applicant's business name, Project name, Space Type and Rating Scope where applicable and Target Rating as set out in the Project Detail Form;
 - ii. the applicable Status of this Agreement
 - iii. the Target Rating, Design Reviewed Target Rating and Certified Performance Rating for the Project.
- b. The Scheme Administrator shall not publish any Rating after a timely receipt of an Applicant's written request asking for their details not to be published.
- c. The Scheme Administrator agrees that it will use all reasonable endeavours to update the Status of the Project on the Website every month.

13. WARRANTIES AND INDEMNITY AND INSURANCE

- a. The Applicant warrants and undertakes that:
 - i. it shall not do or cause to be done any act or thing which may impair the Scheme Administrator's right, title and interest in the Trade Marks;
 - ii. all specifications and information that the Applicant provides to the Simulator, Reviewer and the Scheme Administrator (including any employees, agents and independent contractors of those people) under this Agreement will be accurate and complete in all material respects to the best of the Applicant's knowledge;
 - iii. it has the authority of all relevant persons to enter into this Agreement; and
 - iv. it has control of the Project and is authorised and able to perform all the obligations under this Agreement;
 - v. it has consulted with a legal adviser and obtained legal advice in respect of its rights and obligations under this Agreement or acknowledges that it has had the opportunity to do so; and
 - vi. it will comply at all times with all applicable Laws in exercising its rights under this Agreement.
- b. The Applicant shall be liable for any claims, suits, liabilities, losses, damages, fines, costs, settlement payments or expenses (including legal expenses) incurred by the Scheme Administrator arising out of a breach of this Agreement by the Applicant but only to the extent that any such claims, suits, liabilities, losses, damages, fines, costs settlement payments or expenses were not caused by the Scheme Administrator.
- c. This clause 13 shall continue to apply after the expiry or termination of this Agreement.
- d. During the term of this Agreement and for a period of 6 years thereafter, each party shall maintain, at a minimum, with a reputable insurance company, the following

insurances:

- i. Employers Liability Insurance to a value of £5 million;
 - ii. Public Liability Insurance to a value of £1 million; and
 - iii. Professional Indemnity Insurance to a value of £1 million.
- e. The parties shall on request supply to one another, evidence of such Insurance Policies and evidence that the relevant premiums have been paid.

14. LIMITATION OF LIABILITY

- a. To the extent permitted by Law, in no event will the Parties be liable for any indirect, special, incidental, economic or consequential damage or damages for negligence or any loss of profit however arising under this Agreement.
- b. Each Party's total liability arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the fees paid under this Agreement per claim or series of claims arising from any one incident.
- c. The Applicant agrees that in no event shall the Scheme Administrator have any liability if it decides not to grant a Design Reviewed Target Rating to the Project (or any portion of the Project) for any reason save in the event of fraud, wilful default or gross negligence.

15. TERMINATION

15.1 TERMINATION BY THE SCHEME ADMINISTRATOR

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

- a. the Applicant is in material breach of any term of this Agreement and, if that breach is capable of remedy, has not remedied the breach within a reasonable period (having regard to the nature of the breach) after the Scheme Administrator has given written notice requiring it to do so;
- b. the Applicant engages in any conduct in relation to the Target Rating, Design Reviewed Target Rating, Design Reviewed Target Rating Certificate or Trade Marks which is reasonably likely to, or does, mislead or deceive (including by omitting relevant facts);
- c. the Applicant has not been awarded a Design Reviewed Target Rating or, in the reasonable opinion of the Scheme Administrator, has delayed the Independent Design Review by any one or more acts or omissions which results in the Independent Design Review Report not being completed at a sufficiently early stage in the project, i.e. before the design has been finalized, to allow major changes to the design, as set out in the Guide (save where beyond the reasonable control of the Applicant);
- d. data does not start being collected for the purposes of obtaining a Certified Performance Rating by the Data Collection Start Date;
- e. the Completion Certificate date for the Project does not occur within six (6) years (or such longer number of years as agreed by the Parties acting reasonably) of the Agreement Date;
- f. to the extent permitted by Law, any of the following events occur by or in relation to the Applicant:
 - i. an administrator is appointed;
 - ii. any legal action, not being in the reasonable estimation of the Scheme Administrator a disputed action, is commenced, a judicial order is made, or resolution is passed for the liquidation of the Applicant; or

- iii. the Applicant ceases business.

15.2 TERMINATION BY THE APPLICANT

- a. If the Applicant wishes to sell, transfer or otherwise dispose of its rights in relation to the Project including the Project property (**Project Rights**), the Applicant must notify the Scheme Administrator in writing and the Scheme Administrator will co-operate with such novation. The Applicant may assign its rights under this Agreement on a donee without the consent of the Scheme Administrator but must notify the Scheme Administrator in writing as soon as practicable after the assignment.
- b. The Applicant may immediately terminate this Agreement, by written notice to the Scheme Administrator, if the Applicant sells, transfers or otherwise disposes of its rights in relation to the Project including the Project property and the Purchaser does not wish to be bound by this Agreement or enter into a similar agreement with the Scheme Administrator.
- c. If the Scheme Administrator breaches this Agreement and fails to remedy such breach within a reasonable period (having regard to the nature of the breach) following receipt of notice from the Applicant requiring the breach to be remedied, the Applicant may terminate this Agreement by written notice to the Scheme Administrator.

15.3 CONSEQUENCES OF TERMINATION

The following provisions shall apply on termination of this Agreement:

- a. Any termination of this Agreement will not prejudice either party's rights to seek and obtain damages for any breach of this Agreement prior to termination.
- b. The Applicant shall not be entitled to a refund where termination is due to a material breach, fault, act or omission of the Applicant.
- c. The Applicant shall be entitled to a refund where termination is due to a material breach, fault, act or omission of the Scheme Administrator.

15.4 APPLICANT'S RESPONSIBILITIES ON TERMINATION

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

- a. cease any and all use of the Trade Marks as soon as reasonably practicable;
- b. remove the Design Reviewed Target Rating Certificate (if any) from public display as soon as reasonably practicable; and
- c. cease to promote or otherwise refer to a Design for Performance Agreement or Target Rating or Design Reviewed Target Rating in connection with the Project as soon as reasonably practicable.
- d. immediately pay the Scheme Administrator the full amount of all sum due from the Applicant to the Scheme Administrator together with any interest payable.

16. CONFIDENTIALITY

- a. Subject to any other provision of this Agreement, neither party may disclose to any third party Confidential Information and will keep confidential all the Confidential Information provided to it.
- b. The Scheme Administrator and the Applicant may disclose Confidential Information of the other, if:
 - i. such disclosure is required by Law and/or the rules of any listing authority or stock exchange on which its shares are listed;
 - ii. such disclosure is necessary to perform the obligations under this

- Agreement and provided the recipient of the Confidential Information agrees to keep it confidential;
- iii. such disclosure is required to be made to prospective purchasers and capital partners of the Applicant, and current and prospective tenants to this, provided that the Applicant procures that each recipient of the Confidential Information strictly observes the obligations of the Applicant under this clause;
 - iv. the Confidential Information is or becomes generally available in the public domain through no breach of this Agreement; or
 - v. the Scheme Administrator or the Applicant can demonstrate that it knew the Confidential Information before the other party to this Agreement disclosed such Confidential Information.
- c. The parties agree that negotiations relating to this Agreement shall constitute Confidential Information until the Agreement Date.
 - d. This clause 16 shall continue to apply after expiry or termination of this Agreement.

17. ASSIGNMENT

- a. If the Scheme Administrator ceases to be CIBSE Certification Ltd. for any reason prior to termination or expiry of this Agreement, then the Scheme Administrator may require the Applicant to:
 - i. enter into a deed to vary this Agreement to replace the definition of “Scheme Administrator” with the new Scheme Administrator; or
 - ii. enter into a deed of assignment or novation with the new Scheme Administrator, to effect an assignment or novation of this Agreement on the same terms and conditions as this Agreement to the new Scheme Administrator (with only those changes required to effect the assignment or novation, or as otherwise agreed by the parties), for the balance of the term of this Agreement.

18. NOTICES

- a. Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing, and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office or its principal place of business, or alternatively sent by email to the other party's designated email address.
- b. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second business day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by email, on the next business day after confirmation of receipt.
- c. This clause shall apply upon any change to NABERS Administrator, and any subsequent contract novation but not apply to the service of other proceedings, or other documents in any legal action.

19. DISPUTE RESOLUTION

- a. The Parties shall use reasonable endeavours to solve any disputes arising relating to

this agreement, in interpretation or the execution of the Parties obligations, or any other matter arising from this Agreement.

- b. If any dispute arises in connection with this agreement, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.
- c. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR.
- d. To initiate the mediation a party must give notice in writing ("ADR notice") to the other party to the dispute requesting mediation. A copy of the request should be sent to CEDR.
- e. The mediation will take place in London, England and the language of the mediation will be English. The mediation will start not later than 30 days after the date of the ADR notice.
- f. The commencement of a mediation will not prevent the parties commencing or continuing an arbitration.
- g. The Mediation Agreement referred to in the Model Procedure shall be governed by, and construed and take effect in accordance with the substantive law of England and Wales. The courts of England shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of, or in connection with, the mediation.

20. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with English Law and the Parties hereby submit to the exclusive jurisdiction of the English courts.

21. THIRD PARTIES

Save as expressly provided in this Agreement, no term shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party (being any person other than the parties, their permitted successors and assignees). A person who is not a party to the Agreement shall not have any rights under or in connection with it, including an Applicant's Representative.

22. APPLICANT'S REPRESENTATIVE

If the Applicant nominates a Representative:

- a. The Applicant confirms that the Representative has been granted authority to administer the Agreement in relation to the Project on its behalf, and with the full knowledge of the Applicant;
- b. The Applicant accepts that it will be liable under this Agreement for the actions of its Representative, as if those same actions were taken by the Applicant;
- c. The Applicant must notify the Scheme Administrator promptly of the revocation of authority of any Representative;
- d. The Scheme Administrator may rely on instructions and information provided by the Representative as if they were provided by the Applicant;
- e. Any information or instructions provided by the Representative to the Scheme Administrator, the Simulator, the Reviewer or the Accredited Assessor will be deemed to have been given by the Applicant;
- f. The Scheme Administrator may discuss the Project and all matters arising under this Agreement with the Representative as if the Representative were the Applicant.

23. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the parties with respect to

the subject matter. It sets out the only conduct, representations, warranties, covenants, conditions or understandings (collectively, the '**Conduct**') relied on by the parties and supersedes all earlier Conduct between the parties in connection with its subject matter. Neither party has relied on nor is relying on any other Conduct in entering into this Agreement and completing the transactions contemplated by it. This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one agreement.

24. WAIVERS

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

25. SEVERABILITY

Any provision of this Agreement which is invalid in any jurisdiction shall be invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

Schedule 1. RATING LICENCE PERIOD, RIGHTS AND STATUS

RATING TYPE	APPLICABLE LICENCE PERIOD	APPLICABLE RIGHTS	APPLICABLE STATUS
<p>Target Rating</p>	<p>The Target Rating Licence Period commences on the Agreement Date and expires on the earliest of:</p> <ul style="list-style-type: none"> • The date the Project is awarded a Design Reviewed Target Rating; • The date this Agreement is terminated or expires for any reason. 	<p>Use of NABERS word only and no other Trade Marks.</p> <p>Use of the NABERS word is limited to use on standard size documents and on websites and social media. The NABERS word may not be used on large signs, banners etc.</p> <p>Use of the NABERS word must be accompanied by the words “Targeting” or “Target Rating”, such as:</p> <ul style="list-style-type: none"> • “NABERS Target Rating of [specify Target Rating] Stars with a signed Design for Performance Agreement”; • “NABERS Design for Performance Target Rating of [specify Target Rating] Stars” <p>The font size to be used for the word “Target” or “Targeting” must be the same font size used for the word “NABERS” or larger. Only the Target Rating that has been nominated (and is current at the relevant time) for the Project may be referred to.</p>	<p>In progress (Agreement signed)</p>
<p>Design Reviewed Target Rating</p>	<p>The Design Reviewed Target Rating Licence Period commences on the date on which the Design Reviewed Target Rating is awarded by the Scheme Administrator and expires on the earliest of:</p> <ul style="list-style-type: none"> • the date the Project is awarded a Certified Performance Rating; • The date that is 40 months after the Completion Certificate Date for the Project; and 	<p>Use of the NABERS word and other Trade Marks associated with Design Reviewed Target Rating and the Design Reviewed Target Certificate (subject to the below). In addition to the Target Rating Applicable Rights, use of the NABERS word may in addition be accompanied by the words “Design Reviewed Target Rating”, such as:</p> <ul style="list-style-type: none"> • “NABERS Design Reviewed Target Rating of [specify Target Rating] Stars”; • “NABERS Design for Performance Design Reviewed Target Rating of [specify Target Rating] Stars” 	<p>In progress (Design Reviewed Target Rating)</p>

	<ul style="list-style-type: none"> the date this Agreement is terminated or expires for any reason. 	<p>The NABERS word and other Trade Marks may appear on large signs and banners and the Design Reviewed Target Rating Certificate may be displayed.</p> <p>The font size to be used for the word “Target” must be the same font size used for the word “NABERS” or larger.</p> <p>Only the Design Reviewed Target Rating that has been awarded (and is current at the relevant time) may be referred to.</p> <p>Display of the then-current Design Reviewed Target Rating Certificate and logo.</p>	
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Other possible Status options for the Agreement are as follows:

Not valid - terminated by the Scheme Administrator	If the Scheme Administrator terminated a Design for Performance Agreement. This status is a final status for the Project.
Not valid - terminated by Applicant	If the Applicant terminates a Design for Performance Agreement. This status is a final status for the Project.
Not valid – terminated due to Project transfer	If the Applicant sells some or all of the Project and the purchaser does not sign a deed of novation of the Agreement
Achieved	Status valid once a Project’s first (or second, in specific cases) Certified Performance Rating is awarded that is equal to or higher than the Project’s Design Reviewed Target Rating. This status is a final status for the Project.
Not achieved	Status valid once a Project’s first (or second, in specific cases) Certified Performance Rating is awarded with a star rating that is less than the Project’s Design Reviewed Target Rating. This status is a final status for the Project.

Schedule 2. LIMITATION OF TRUSTEE LIABILITY

This Schedule is only applicable to Trustees and Trustee Companies.

1. Insert Applicant's Name **(Trustee)** enters into this Agreement in its capacity as the trustee for the [Insert name of Trust] **(Trust)** constituted by a trust deed **(Trust Deed)**.
The Trustee:
 - a) warrants that:
 - (i) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (ii) entry into this Agreement is for the benefit of the beneficiaries of the Trust and as trustee it is authorised and empowered under the Trust Deed to enter into and to perform its obligations and satisfy or discharge its liabilities under this Agreement;
 - (iii) it is not in breach of the Trust Deed;
 - (iv) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this Agreement;
 - (v) it is not aware of any reason why the assets of the Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this Agreement; and
 - (vi) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this Agreement and all necessary action has been taken to authorise the execution and performance of this Agreement under the Trust Deed; and
 - b) indemnifies the Scheme Administrator, and agrees to keep the Scheme Administrator indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 1.1.1.a) of this Schedule.
2. Prior to the Trustee being replaced as the trustee of the Trust in accordance with the Trust Deed:
 - a) the Trustee must procure that the replacement trustee enters into a new agreement with the Scheme Administrator on the same terms as this Agreement;
 - b) the Trustee (as outgoing trustee) must procure an agreement from the Scheme Administrator, under which the Scheme Administrator releases the Trustee from the requirement to observe and perform any future obligation under this Agreement;
 - c) the Trustee (as outgoing trustee) must release the Scheme Administrator, from the requirement to observe and perform any future obligation under this Agreement; and
 - d) the Trustee (as the outgoing trustee) must pay the reasonable costs and expenses of the Scheme Administrator in relation to entering into a new agreement under this clause 1.1.2 of this Schedule.

3. Subject to clause 1.1.5 of this Schedule, liability arising under or in connection with this deed (except under or in connection with clause 1.1.1 of this Schedule above) is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.
4. No party to this Agreement or any person claiming through or on behalf of them will be entitled to:
 - a) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;
 - b) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or
 - c) enforce or seek to enforce any judgment in respect of a liability under this Agreement or otherwise against the Trustee in any capacity other than as Trustee of the Trust,except under or in connection with clause 1.1.1 of this Schedule above.
5. Notwithstanding any other provision of this Agreement, clauses 1.1.3 and 1.1.4 of this Schedule do not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of Law, a reduction in the extent of the Trustee's indemnification, or loss of the Trustee's right of indemnification, out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as trustee of the Trust.
6. Nothing in clause 1.1.5 of this Schedule will make the Trustee liable for any claim for an amount greater than the amount which the Scheme Administrator would have been able to claim and recover from the assets of the Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

Schedule 3. APPLICANT’S REQUEST FOR STATUS EXTENSION - SECOND PERFORMANCE RATING

1. PROJECT

This Confirmation applies to the Project identified below:

Project Name:

DfP Agreement Number:

Energy Efficiency Improvement plan to justify Request:

2. APPLICANT

The term Applicant, as defined in the Agreement, is identified below:

Applicant’s Name:

Applicant’s Representative name:

Email address

By signing below, the Applicant requests the Scheme Administrator to delay publication of the final Status of the Design for Performance Agreement for the Project pending a second Certified Performance Rating for the Project. The Applicant acknowledges that this request will be assessed by the Scheme Administrator in its discretion.

3. EXECUTION

The Applicant to all the provisions of this Request

Applicant

Signature of Applicant

Name

Title

Date

Approved by the CIBSE Certification Ltd

Y/N