



HSDL01 Homestar[®] Terms and Conditions

New Zealand Green Building Council Incorporated

IMPORTANT: PLEASE READ THESE HOMESTAR TERMS AND CONDITIONS CAREFULLY BEFORE COMPLETING AND SIGNING THE HOMESTAR PROJECT REGISTRATION FORM. BY COMPLETING AND SIGNING THE HOMESTAR PROJECT REGISTRATION FORM, YOU ARE AGREEING TO BE BOUND BY THESE AND CONDITIONS. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT COMPLETE AND SIGN THE HOMESTAR PROJECT REGISTRATION FORM.

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Parties

New Zealand Green Building Council Incorporated registration number 1764755, of Level 2, Tower 1, 205 Queen Street, Auckland 1010 (**NZGBC**)

Email: office@nzgbc.org.nz

Attention: Andrew Eagles

and

Project Owner (as set out in the relevant Homestar Project Registration Form)

Background

- A The Homestar Tool has been developed for the purpose of promoting better quality, sustainable residential dwellings in New Zealand
- B The Homestar Tool can be used to evaluate dwellings at various stages of their design and construction (i.e. standard plan, design and completed dwelling). These Terms and Conditions (hereon referred to as the 'agreement') relates to the Volume Assessment, Design Rating and Built Rating stages.
- C In exchange for the Homestar Administrative and Audit Fees, NZGBC will, on the terms of this agreement, audit a Design Assessment of the Design(s) and a Built Assessment of the Residential Dwelling(s).
- D In exchange for the Homestar Volume Assessment Fees, NZGBC will, on the terms of this agreement, audit a Volume Assessment of the standard design(s) or specification(s), and client quality assurance process
- E Subject to the terms of this agreement, if a Design is awarded a Design Rating then NZGBC will provide the Design Rating Benefits (with respect to that Design) and if a Residential Dwelling (built in accordance with that Design) is awarded a Built Rating, NZGBC will provide the Built Rating Benefits (with respect to that Residential Dwelling).
- F Subject to the terms of this agreement, following the audit of a Volume Assessment, NZGBC will provide a Conditionally Confirmed Points Summary valid for 3 years from the date of confirmation for each Volume Assessed design or specification as well as confirmation of whether the client quality assurance process is accepted by NZGBC
- G Upon receipt by NZGBC of the Homestar Project Registration Form completed and signed by the Project Owner, each of NZGBC and the Project Owner agrees to be bound by the terms of this agreement.

Operative provisions

1 Supply of services

NZGBC's obligations - Design Rating

- 1.1 NZGBC will audit a Design Assessment conducted by a Homestar Assessor, using the Homestar Tool. Where all relevant criteria have been fulfilled and the fulfilment of such criteria has been confirmed by NZGBC then, provided the Project Owner is not in breach of this agreement or the agreement entered into between it and the Assessor, NZGBC will, subject to clauses 1.2 and 2.16:
- 1.1.1 award a Design Rating; and
 - 1.1.2 provide the Design Rating Benefits on the terms of this agreement.
- 1.2 If a Built Rating is not obtained within two years of the date of award of the relevant Design Rating, then the Design Rating will expire, and the Project Owner will cease to be entitled to the relevant Design Rating Benefits, unless such two year period is extended with the consent of NZGBC.

NZGBC's obligations - Built Rating

- 1.3 Subject to the relevant Design being awarded a Design Rating, and following the Project Owner notifying NZGBC of completion of the corresponding Residential Dwelling or Residential Dwellings, NZGBC will audit a Built Assessment of each Residential Dwelling by a Homestar Assessor, using the Homestar Tool.
- 1.4 Where all relevant criteria have been fulfilled and the fulfilment of such criteria has been confirmed by NZGBC then, provided the Project Owner is not in breach of this agreement or the agreement entered into between it and the Assessor, NZGBC will, subject to clause 2.16:
- 1.4.1 award the Built Rating; and
 - 1.4.2 provide the Built Rating Benefits on the terms of this agreement.
- 1.5 For the avoidance of doubt, Design Rating or Built Rating awarded is specific to the relevant Residential Dwelling in respect of which it is granted and may not be transferred to any other Residential Dwelling.

NZGBC's obligations – Volume Assessment

- 1.6 NZGBC will audit a Volume Assessment conducted by a Homestar Assessor, using the Homestar Tool. Where all relevant criteria for the credits and points being targeted have been fulfilled and the fulfilment of such criteria has been confirmed by NZGBC then, provided the Project Owner is not in breach of this agreement or the agreement entered into between it and the Assessor, NZGBC will, subject to clauses 1.2 and 2.16:

- 1.6.1 award a Conditionally Confirmed Points Summary
- 1.6.2 provide the Volume Assessment Benefits on the terms of this agreement.
- 1.7 The points Conditionally Confirmed for a Volume Assessed design or specification following a Volume Assessment can be claimed in all projects where these designs or specifications are used for a period of 3 years from the date of confirmation, to the extent that the constructed dwellings reflect the features and performance of the designs or specifications for which points were pre-awarded
- 1.8 Subject to the terms of this agreement, once a Volume Assessed plan's status lapses after 3 years, NZGBC will allow the assessment of the plan to be resubmitted by an accredited Homestar Assessor for audit and status renewal based on the version of the Homestar tool current at the time of submission at 50% of the fee then applicable for a new Volume Assessment

Independent contractor

- 1.9 NZGBC will act in the capacity of an independent contractor in the performance of any obligation under this agreement. This agreement will not create, or be construed to create, any express or implied relationship between the Project Owner and NZGBC of employment, principal and agent, partnership or joint venture.

Engagement of Assessor

- 1.10 The Project Owner will engage one or more Homestar Assessors to undertake the Volume Assessment, Design Assessment and Built Assessments provided for in this agreement and will be responsible for all fees and charges payable to Homestar Assessors in connection with such assessments.
- 1.11 The Project Owner will promptly notify NZGBC of the identity of the Assessors as and when they are appointed.
- 1.12 The Project Owner acknowledges that:
 - 1.12.1 for the purposes of this agreement and the agreements between the Project Owner and the Assessors, the Assessors are not contractors, agents, employees or representatives of NZGBC and have no power or authority to act or to assume any obligation or authority on behalf of NZGBC;
 - 1.12.2 subject to any rights the Project Owner has under the Consumer Guarantees Act 1993, NZGBC is not liable in any way for any loss arising from the acts or omissions of the Assessor; and
 - 1.12.3 any other products or services that the Assessor may provide or recommend are not endorsed by NZGBC.

2 Homestar Administrative and Audit Fees and volume Assessment Fees

- 2.1 The Homestar Administrative and Audit Fees cover the NZGBC administration and audit cost of design ratings and built ratings.
- 2.2 The Homestar Volume Assessment Fees cover the NZGBC administration and audit cost of Volume Assessments
- 2.3 Administration connected to a project is composed of a base level of work which is fixed for each project, and a variable level of work depending on number of Residential Dwellings contained in a project, as each Residential Dwelling receives an individual rating. The administrative component of the Administrative and Audit Fee is therefore a fixed fee as set out on NZGBC's website from time to time.
- 2.4 Audit work is influenced by the number of Typologies audited, and the audit fee is charged at an amount PER Typology as set out on NZGBC's website from time to time.
- 2.5 Volume Assessment Fees for a new assessment consist of a fixed fee as set out on NZGBC's website from time to time covering administration costs associated with processing a Volume Assessment from initial registration to point award, and a fee PER distinct design or specification submitted for audit under Volume Assessment as set out on NZGBC's website from time to time, which cover audit costs associated with each design or specification.
- 2.6 When the status of a Volume Assessed plan lapses after 3 years, it will need to be re assessed and submitted to NZGBC for renewal. The renewal fees are 50% of the fees for a new Volume Assessment as per clause 2.5 above.
- 2.7 NZGBC has made a Homestar pricing calculator publicly available from the NZGBC website that can be used to calculate the Administrative and Audit Fees for a project based on the number of Residential Dwellings and Typologies in that project.
- 2.8 For a project with many Residential Dwellings, NZGBC requires that the worst orientation of each typology is assessed. Individual dwellings based on the typology can then be awarded a minimum Homestar rating as set out in the technical manual. If requested by the Project Owner, NZGBC can also assess additional typologies with better orientation to allow for a range of Homestar ratings in the project.
- 2.9 The number of typologies is determined by the Assessor. If the Assessor is not engaged at the time of project registration, additional fees may be charged if additional typologies are identified by the Assessor.
- 2.10 Designs that intend to use the Energy Modelling credit will be charged a nominal fee per design as set out on NZGBC's website from time to time, associated with level of audit work required to confirm the credit.
- 2.11 Innovation credits applied for will be charged a nominal fee per credit as set out on NZGBC's website from time to time, related to the level of audit work required to confirm the credit.

- 2.12 Technical Questions (TQs) are charged at an amount per question as set out on NZGBC's website from time to time. Each project receives two free TQs.

Payment of fees

- 2.13 NZGBC will calculate the Homestar Administrative and Audit Fees and Volume Assessment Fees and will issue to the Project Owner a valid GST Invoice in respect of the Homestar Administrative and Audit Fees and/or Volume Assessment Fees following entry into this agreement.
- 2.14 If further Homestar Administrative and Audit Fees are incurred during the duration of the project, for example in respect of Technical Questions, NZGBC will issue a GST Invoice at the time that it agrees to provide the additional service.
- 2.15 The Project Owner must pay the Homestar Administrative and Audit Fees to NZGBC together with the applicable GST on or before the 20th day of the calendar month following receipt of the relevant GST Invoice.
- 2.16 Without limiting any other rights that may be available to it, NZGBC may withhold the Volume Assessment Benefits and/or Design Rating Benefits and/or the Built Rating Benefits if the Volume Assessment Fees and/or Homestar Administrative and Audit Fees (or any applicable GST) remain outstanding in whole or part.

Goods and services tax

- 2.17 Unless otherwise stated, all amounts and values referred to in this agreement are exclusive of GST.
- 2.18 To the extent that any supply from one party (**Supplier**) to another party (**Recipient**) under this agreement constitutes a taxable supply for GST purposes (**Taxable Supply**), an amount equal to the GST chargeable on that Taxable Supply, as between the Supplier and the Recipient, will be payable by the Recipient to the Supplier in addition to the amount payable for the Taxable Supply. The Recipient will pay the GST amount at the same time and in the same manner as payment for the Taxable Supply is required, provided that on or before that time the Supplier has issued to the Recipient a GST Invoice.

3 Undertakings by Project Owner

Undertakings

- 3.1 The Project Owner undertakes each of the following:
- 3.1.1 It will provide the Assessor with all information reasonably requested by the Assessor in order to complete the Volume Assessments, Design Assessments and the Built Assessments provided for in this agreement.

- 3.1.2 That all information provided to the Assessor will be true, accurate and complete in all respects.
- 3.1.3 It will not say or do anything to bring Homestar or the Homestar Tool into disrepute.
- 3.1.4 It will not represent that it owns, or has rights in respect of the Homestar Ready Logo, the Homestar Design Rating Logo, the Homestar Built Rating Logo or any other logo or trademark used or owned by NZGBC.
- 3.1.5 It will only use the Homestar Ready Logo, the Homestar Design Rating Logo and the Homestar Built Rating Logo as and to the extent permitted under this agreement and not in a way that is misleading or deceptive.
- 3.1.6 To not use, or authorise anyone including future purchasers of the Residential Dwelling to use, the Homestar Built Rating Certificate or the Homestar Built Rating to promote the Residential Dwelling, if the Residential Dwelling is modified in any way that might reasonably be expected to affect its Homestar rating.

4 Publicity

Publicity by each party

- 4.1 If the Project Owner receives a Design Rating then, unless and until that rating expires, either party may publicise the arrangement contemplated by this agreement and the outcome, provided that the NZGBC Brand Guidelines are complied with and provided that permission is not explicitly rescinded by either party.
- 4.2 If the Project Owner receives a Built Rating then each party may publicise the arrangement contemplated by this agreement and the outcome, provided that the NZGBC Brand Guidelines are complied with and provided that permission is not explicitly rescinded by either party.
- 4.3 If a plan is volume assessed and has at least 40 points conditionally confirmed, then each party may publicise the arrangement contemplated by this agreement and the outcome, provided that the NZGBC Brand Guidelines are complied with and provided that permission is not explicitly rescinded by either party.
- 4.4 A project owner may only use the term 'Homestar Ready' or the Homestar Ready Logo in relation to a plan or a dwelling being constructed to a plan that has completed a Volume Assessment and as at least 40 points conditionally confirmed via that assessment.
- 4.5 NZGBC will collect, use, disclose, hold, and otherwise process any personal information collected or generated under or in connection with this agreement (including street address and star rating of dwellings that have a Design Rating or a Built Rating confirmed) or in accordance with its privacy policy available at its website as updated from time to time.

5 Licence of Homestar Logo

Licence of Homestar Design Rating Logo

- 5.1 If a Design receives a Design Rating and the Project Owner is eligible to receive the Design Rating Benefits, then the Project Owner will receive a non-exclusive, non-transferable limited licence to use the Homestar Design Rating Logo in advertising in connection with that Design on the terms set out in this agreement including in part 2 of Schedule 1. All use of the Homestar Design Rating Logo must be in accordance with the Homestar Brand Guidelines. This licence will expire on the earlier of expiry of the Design Rating and issue of the corresponding Built Rating.
- 5.2 The licence granted under clause 5.1 may not be sub-licensed. In particular the Project Owner may not permit any third party, including any contractor or consultant, to use the Homestar Design Rating Logo to promote its association with the Design, except by direct prior arrangement with NZGBC.

Licence of Homestar Built Rating Logo

- 5.3 If the Residential Dwelling receives a Built Rating and the Project Owner is eligible to receive the Built Rating Benefits, then the Project Owner will receive a non-exclusive, non-transferable limited licence to use the Homestar Built Rating Logo in advertising in connection with that Residential Dwelling on the terms set out in this agreement including in part 3 of Schedule 1. All use of the Homestar Built Rating Logo must be in accordance with the Homestar Brand Guidelines.
- 5.4 The licence granted under clause 5.3 may not be sub-licensed. In particular the Project Owner may not permit any third party, including any contractor or consultant, to use the Homestar Built Rating Logo to promote its association with the Residential Dwelling, except by direct prior arrangement with NZGBC.

6 Intellectual Property

Ownership of intellectual property

- 6.1 Each party will continue to own all intellectual property owned by it outside this agreement. For the avoidance of doubt the Project Owner agrees that NZGBC retains all copyright and other intellectual property rights in the Homestar Tool, the Homestar Ready Logo, the Homestar Design Rating Logo, the Homestar Built Rating Logo and the Technical Manual.

Restrictions on use

- 6.2 The Project Owner will not use, display or distribute (including on a website) any documents provided to it in connection with this agreement or the Technical Manual unless expressly authorised to do so by this agreement or the Technical Manual.

7 Confidential Information

Obligations of confidence

- 7.1 Where one party receives any confidential information of the other under this agreement or otherwise in connection with any services to be provided under this agreement, that party must:
- 7.1.1 Keep the confidential information confidential.
 - 7.1.2 Not use, disclose or reproduce the confidential information for any purpose other than the purposes of this agreement and for analytical or statistical reporting purposes.
 - 7.1.3 Not, without the other party's written consent, disclose the confidential information to any person other than its employees, subcontractors and agents who need the information for the purposes of this agreement.
 - 7.1.4 Ensure that, when confidential information is used for analytical or statistical reporting purposes, that information is aggregated and processed in such a way that no individual piece of information is attributable to the other party, unless prior consent is received from that party.
 - 7.1.5 For the avoidance of any doubt the street address, and Homestar Built and Design ratings achieved will be assumed to be part of the public domain unless the Plan Owner explicitly wishes otherwise. Any other disclosure of personal information permitted by NZGBC's privacy policy is also not restricted by this clause 7.

Further permitted use and disclosure

- 7.2 Notwithstanding clause 7.1, a party that receives the confidential information of the other may use or disclose the confidential information to the extent necessary to fulfil any of the following:
- 7.2.1 Comply with any law, binding directive of a regulator or a court order.
 - 7.2.2 Obtain professional advice in relation to matters arising under or in connection with this agreement.

Exclusions

- 7.3 Clause 7.1 does not apply to confidential information for which any of the following applies:
- 7.3.1 Information which is in or becomes part of the public domain otherwise than through breach of an obligation of confidence.

- 7.3.2 Information which was known to the party receiving the confidential information at the time of disclosure, unless such knowledge arose through breach of an obligation of confidence.
- 7.3.3 Information which is acquired from a third party where that third party was entitled to disclose it.

8 Termination

Termination

- 8.1 NZGBC may terminate this agreement immediately by notice to the Project Owner if any of the following occurs:
 - 8.1.1 The Project Owner engages in any conduct in relation to the Homestar Tool, a Design Rating, a Built Rating or any Homestar logo which in NZGBC's reasonable opinion is likely to, or does, mislead or deceive.
 - 8.1.2 The Project Owner sells, transfers, assigns or otherwise disposes of its rights or obligations under this agreement without obtaining NZGBC's prior approval (not to be unreasonably withheld or delayed).
 - 8.1.3 In the sole opinion of NZGBC, the Project Owner wishing to obtain a Design and Built Rating has delayed by any one or more act or omission and such Design Rating has not been completed by the date falling twelve months following the date of this agreement.
 - 8.1.4 In the sole opinion of NZGBC, the Project Owner wishing to obtain a Design and Built Rating has delayed by any one or more act or omission and such the Built Rating has not been completed by the date falling twenty-four months following the date of the design rating being awarded.
 - 8.1.5 In the sole opinion of NZGBC, the Project Owner wishing to obtain a Built Rating only has by any one or more act or omission and such Built Rating has not been completed by the date falling twenty-four months following the date of this agreement.
 - 8.1.6 In the sole opinion of NZGBC, the Project Owner wishing to obtain a Volume Assessment for a plan or any number of plans has by any one or more act or omission and such Volume Assessment not been completed by the date falling twenty-four months following the date of this agreement.
 - 8.1.7 The Project Owner commits a material breach of its obligations under this agreement and does not remedy the breach (to the extent that it can be remedied) within ten business days after receiving a notice from NZGBC specifying the breach and requiring it to be remedied.

- 8.1.8 The Project Owner is subject to an Insolvency Event.
- 8.2 The Project Owner may terminate this agreement immediately by notice to NZGBC if any of the following occurs:
 - 8.2.1 NZGBC commits a material breach of its obligations under this agreement and does not remedy the breach (to the extent that it can be remedied) within ten business days after receiving a written notice.
 - 8.2.2 NZGBC is subject to an Insolvency Event.

Refund of Homestar Administrative and Audit Fees

- 8.3 NZGBC may terminate this agreement under clause 8.1. The Project Owner may terminate this agreement under clause 8.2 or at any time with 30 days written notice.
 - 8.3.1 If this agreement is terminated by NZGBC under clause 8.1 then the Homestar Administrative and Audit Fees (if paid) will not be refunded to the Project Owner, and if and to the extent unpaid at the time of termination such fee will, together with any applicable GST, remain payable by the Project Owner to NZGBC.
 - 8.3.2 If this agreement is terminated by the Project Owner under clause 8.2 then NZGBC's liability under this agreement will be limited to refunding the Homestar Audit Fees (together with any applicable GST) charged in respect of a dwelling that has not been rated.
 - 8.3.3 If this agreement is terminated by the Project Owner for any reason other than under clause 8.2 they will have no claim for reimbursement of the Homestar Administrative and Audit Fees or any other fees paid or payable in respect to the project.

Obligations to continue after agreement ends

- 8.4 All obligations contained in clause 7 will continue in full force and effect after this agreement ends.
- 8.5 For the avoidance of doubt, any obligation on NZGBC to provide any Design Rating Benefits or Built Rating Benefits will cease on termination of this agreement.

9 Dispute Resolution

Meeting to attempt to resolve disputes

- 9.1 If a dispute arises under this agreement, either party may at any time give notice to the other requesting that a meeting take place to seek to resolve the dispute. Nominated senior representatives of both parties must meet within five business days of the notice and endeavour to resolve the dispute in good faith. If such meeting does not take place or if after

five business days of the meeting the dispute remains unresolved, either party may pursue its rights at law.

10 Limitation of liability

Liability of NZGBC

10.1 Where the Project Owner is in trade, the parties agree that the provisions of the Consumer Guarantees Act 1993 will not apply to this agreement.

10.2 Where the provisions of the Consumer Guarantees Act 1993 do not apply:

10.2.1 NZGBC's liability under or in connection with the agreement will be limited to the amount of the Homestar Administrative and Audit Fees paid by the Project Owner under this agreement, except in the case of breach of confidence, fraud, theft or wilful default; and

10.2.2 without prejudice to clause 10.1 in no circumstances will NZGBC be liable for (i) any loss of profit, business, contracts, revenues or anticipated savings, or depletion of goodwill, or (ii) any special, indirect or consequential damage of any kind.

11 Notices

Giving notices

11.1 Any notice or communication given to a party under this agreement is only given if it is in writing and sent in one of the following ways:

11.1.1 Delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out:

(a) In respect of NZGBC, under its name at the beginning of this agreement;
and

(b) In respect of the Project Owner, in the relevant Homestar Project Registration Form.

11.1.2 Emailed to that party at its email address and marked for the attention of the relevant department or officer (if any) set out:

(a) In respect of NZGBC, under its name at the beginning of this agreement;
and

(b) In respect of the Project Owner, in the relevant Homestar Project Registration Form.

Change of address

- 11.2 If a party gives the other party three business days' notice of a change of its postal/physical address or email address, any notice or communication is only given by that other party if it is delivered, posted or emailed to the latest postal/physical address, fax number or email address.

Time notice is given

- 11.3 Any notice or communication is to be treated as given at the following time:
- 11.3.1 If it is delivered, when it is left at the relevant address.
 - 11.3.2 If it is sent by post, two (or, in the case of a notice or communication posted to another country, nine) business days after it is posted.
 - 11.3.3 If it is sent by email, on the date and time the email is sent (as shown in a confirmation of the email generated by the sender's computer system which indicates that the email was sent to the email address of the recipient notified for the purpose of this clause and provided that the sender's computer system has not generated a record that the email has not been received).
- 11.4 However, if any notice or communication is given, on a day that is not a business day or after 5pm on a business day, in the place of the party to whom it is sent it is to be treated as having been given at the beginning of the next business day.

12 Miscellaneous

Assignment

- 12.1 The Project Owner must not assign or transfer any of its rights or obligations under this agreement without the prior consent of NZGBC.

Contract and Commercial Law Act 2017

- 12.2 Unless this agreement expressly provides otherwise, it is not intended to confer a benefit on any person or class of persons who is not a party to it.

Entire agreement

- 12.3 This agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier document or anything said or done by or on behalf of another party before this agreement was entered into.

Governing law and jurisdiction

12.4 This agreement is governed by the law of New Zealand. The parties submit to the exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

Variation

12.5 No variation of this agreement will be of any force or effect unless it is in writing and signed by each party to this agreement.

13 Definitions and interpretation

Definitions

13.1 In this agreement the following definitions apply:

Assessor means the Homestar Assessor appointed by the Project Owner to undertake a Design Assessment or a Built Assessment as provided for in this agreement.

Built Assessment means an assessment of a Residential Dwelling by a Homestar Assessor using the Homestar Tool, for the purposes of determining whether the Residential Dwelling meets the Homestar criteria for a Built Rating, and the rating achieved or the Homestar Built rating achieved under such rating, as the context may require.

Built Rating means the Homestar built rating achieved by a Residential Dwelling, as determined by the Built Assessment and Audit.

Built Rating Benefits mean the benefits details of which are set out in part 2 of Schedule 1.

Conditionally Confirmed Points means points that are confirmed following the audit of a Volume Assessment of a plan or specification, on condition that they be verified on site when the dwellings based on this plan or specification is constructed. Following Volume Assessment, a Conditionally Confirmed Points summary is provided to a plan owner, which is to be submitted at the time of registration of a development where dwellings based on the Volume Assessed plan(s) would be built. The summary is valid for 3 years from the date of confirmation, after which plans must be reassessed under the version of Homestar current at that time and have a new summary of Conditionally Confirmed Points issued.

Date of Confirmation means the date on which the plan owner is provided with a summary of Conditionally Confirmed Points following volume assessment.

Design means a plan, details of which are listed in the Homestar Project Registration Form, for a Residential Dwelling or Residential Dwellings designed by or on behalf of the Project Owner which is specific to location and specification.

Design Assessment means an assessment of the Design by a Homestar Assessor using the Homestar Tool, for the purposes of determining whether the Design meets the Homestar criteria for a Design Rating and the rating achieved.

Design Rating means the Homestar design rating achieved by the Design, as determined by the Design Assessment and audit.

Design Rating Benefits means the benefits details of which are set out in part 1 of Schedule 1.

GST means goods and services tax imposed under the Goods and Services Tax Act 1985.

GST Invoice means a tax invoice complying with the requirements of section 24 of the Goods and Services Tax Act 1985.

Homestar Administrative and Audit Fees mean the fees payable by the Project Owner to NZGBC in respect of the services to be provided by NZGBC to the Project Owner under this Agreement.

Homestar Assessor means a person that is accredited as a Homestar Assessor by NZGBC.

Homestar Brand Guidelines means the guide for use of the Homestar logos, published by NZGBC from time to time.

Homestar Built Rating Certificate means a certificate issued by NZGBC confirming the Built Rating of the project.

Homestar Built Rating Logo means the Homestar logo used by NZGBC for dwellings that have been awarded a Built Rating.

Homestar Design Rating Logo means the Homestar logo used by NZGBC for dwellings that have been awarded a Design Rating.

Homestar Rating Tool Website means the website for the Homestar Rating Tool located at <https://www.nzgbc.org.nz/homestar>

Homestar Tool means the residential sustainability rating system developed by Homestar that evaluates the residential sustainability attributes of New Zealand's residential dwellings, the version of which is current as at the date of the relevant Design Assessment or Built Assessment.

Insolvency Event in relation to a person means anything that reasonably indicates that there is a significant risk that that person is or will become unable to pay its debts as they fall due. This includes any of the following:

- (a) A meeting of the person's creditors being called or held.
- (b) A step being taken to make the person bankrupt.
- (c) An order is presented for the sequestration of the person's estate.

- (d) A step being taken to wind the person up.
- (e) A step being taken to have a receiver, receiver and manager, administrator, liquidator or interim liquidator appointed to the person or any of its assets or such an appointment taking place.
- (f) The person entering into any type of arrangement with, or assignment for the benefit of all or any of its creditors including any formal arrangement or compromise under the Companies Act 1993.
- (g) The person ceases or threatens to cease to carry on its main business.
- (h) The person is declared at risk or a recommendation is made by the Financial Markets Authority to appoint a statutory manager of the person, under the Corporations (Investigation and Management) Act 1989.

Rated Plan means a Design that has passed a Design Assessment and that NZGBC has confirmed as a rated plan.

Residential Dwelling means a completed home that, following entry into this agreement has been built in accordance with a Rated Plan, and which is intended to be the subject of a Built Rating provided for under this agreement.

Technical Manual means the version of the Homestar Tool technical manual current as at the date of this agreement.

Typology is a grouping of dwellings with similar size, layout and thermal properties as defined in the current Homestar Technical Manual.

Volume Assessment means an assessment of one or a number of standard plans that the plan owner intends to build across multiple developments, carried out by an accredited Homestar assessor and submitted to NZGBC for audit by independent auditors. These assessments will aim to have a number of points available under the Homestar tool conditionally confirmed, on the basis that they are verified on site after dwellings based on these plans are constructed.

Volume Assessment does not equate to or result in a Design Rating or Built Rating Awarded. However, if 40 or more points can be conditionally confirmed, the plan owner may state that the plan is 'Homestar Ready' and use the Homestar Ready Logo. A Built Rating may be awarded after the conditionally confirmed points are verified on site and any other requirements that the desired Built Rating is conditional upon is met.

Interpretation

13.2 In the interpretation of this agreement, the following provisions apply unless the context otherwise requires:

13.2.1 Headings are inserted for convenience only and do not affect the interpretation of this agreement.

- 13.2.2 A reference in this agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 13.2.3 A reference in this agreement to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced.
- 13.2.4 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this agreement.
- 13.2.5 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 13.2.6 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 13.2.7 A word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other genders.
- 13.2.8 A reference to the word 'include' or 'including' is to be interpreted without limitation.
- 13.2.9 Unless this agreement expressly provides otherwise, a reference to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Auckland.

Schedule 1

Part 1

Design Rating Benefits

1. Design registration number assigned to the Design Rating.
2. The right to use the Homestar Design Rating Logo (with rating) in connection with the Design, on the terms set out in clause 5 of this agreement.

Part 2

Built Rating Benefits

1. Built registration number assigned to the Built Rating.
2. Issue of a Homestar Built Rating Certificate.
3. The right to use the Homestar Built Rating Logo (with rating) in connection with the relevant Dwelling, on the terms set out in clause 5 of this agreement.