

TERMS OF SERVICE

This Software as a Service Agreement (for Direct Users of AccuRate Enterprise) is between Software Provider and User (**Agreement**). By clicking the 'accept' button, the User accepts these Terms of Service (**Terms**) and agrees to be legally bound by this Agreement.

1. Definitions

AAO means Assessor Accrediting Organisation, being an organisation approved by the NatHERS Administrator to accredit persons to carry out NatHERS assessments.

Accredited Accessor means persons accredited by an AAO.

AccuRate Enterprise means a software tool comprising of a calculation engine (known as 'Chenath Engine') developed by the Software Provider to predict annual totals of hourly heating and cooling energy requirements, and other energy consuming device loads, for an Australian residential building, and the AccuRate Interface.

AccuRate Interface means a graphical user interface or software front end used in conjunction with the Application.

Application means AccuRate Enterprise and HStar Portal.

Authorised Users means the User's Personnel who are authorised by the User to access and use the Application under the rights granted to the User under this Agreement.

Client means the User's clients, who require a Transaction.

Confidential Information means all information other than Personal Information in any form or media, which is by its nature confidential or which we identify as confidential and all copies, notes and records made of such information.

Data means data or information uploaded or created by you or your Authorised User by use of the Application, including Rating Files, NatHERS Certificates and NatHERS Rating Report.

Detrimental Use means circumstances that arise with respect to a User or its Authorised Users and their use of the Application, NatHERS Certificate or NatHERS Rating Report, that will or may cause detriment to NatHERS and its integrity.

Documentation means user manuals, technical manuals and any other materials provided by us, in electronic form, that describes the installation, operation, use or technical specifications of the Application.

Fee means the fee payable to purchase a Transaction.

HStar Portal means the web portal at www.hstar.com.au that among other functions, receives Project Information and generates NatHERS Certificates.

IP means any rights in existing or future copyright work (including computer programs, patentable invention, design, circuit layout, new plant variety, trademark, know-how or trade secret).

Major Defects means a defect in the Application, which causes the Application not to function for the Purpose.

NatHERS is the Nationwide House Energy Rating Scheme in Australia, that provides a star rating system for the potential energy performance of dwellings, accredits residential building energy performance modelling software tools and accredits AAOs.

NatHERS Administrator means the Commonwealth department or agency with administrative responsibility for residential energy efficiency ratings.

NatHERS Certificate means an official certificate in a form determined by the NatHERS Administrator generated by the HStar Portal through use of the Application, that describes the key thermal performance features of the building fabric of an Australian residential building, the NatHERS Energy Rating (a star rating from 0 to 10 stars) and energy loads, details of the Accredited Accessor who carried out the assessment and the accreditation they hold, the building address and relevant information regarding energy efficiency regulatory requirements.

NatHERS Integrity Purposes means activities which underpin NatHERS integrity and quality standards, including quality assurance, audits and investigations.

NatHERS Rating Report means an official certificate in a form determined by the NatHERS Administrator generated through use of the Application, that describes the key thermal performance features of the building fabric of an Australian residential building, the NatHERS Energy Rating (a star rating from 0 to 10 stars) and energy loads, details of the Rater who carried out the assessment, the building address and relevant information regarding energy efficiency regulatory requirements.

NCC means National Construction Code.

Personal Information has the same meaning as given in the *Privacy Act 1988 (Cth)*.

Personnel means any officers, employees and contractors.

Pre-Purchase Transaction means an advance payment for a Transaction.

Project Information means information passing between the User or an Authorised User and a Client and used to create input data, including but not limited to, architectural specifications, bills of materials, receipts, photographic evidence and file notes.

Purpose means to complete a Transaction to:

- a) simulate the energy consumption, energy generation, indoor temperature or other parameters in dwellings; and/or
- b) demonstrate compliance with:
 - (i) the NCC Deemed-to-Satisfy NatHERS pathway, or
 - (ii) the NSW Building Sustainability Index (BASIX).

Rater means persons not accredited by an AAO, that undertake ratings using the Application via the AccuRate Interface in rating mode.

Rating Files means an AccuRate Enterprise software file containing all or part of the Project Information required to generate a simulation, star rating or NatHERS Certificate.

Records has the meaning in clause 8.1.

SAP or the NatHERS Software Accreditation Protocol means the NatHERS document(s) (as updated or created from time to time) available at www.nathers.gov.au.

Software Provider means the Commonwealth Scientific and Industrial Research Organisation ABN 41 687 119 230, having

its principal office at CSIRO Black Mountain Science and Innovation Park, Clunies Ross Street, Acton, ACT 2601, Australia.

Support Contact means AccurateEnterprise@csiro.au.

Transaction means the input of Project Information and completion of a simulation, and/or publication of the simulation outputs by way of generation of a NatHERS Certificate or NatHERS Rating Report.

Updates means revised or new versions of any component of the Application which provides for technical improvements or error corrections, and which may provide additional functionalities or improved performance, that the Service Provider makes generally available.

Unexpected Event means anything outside the reasonable control of a party including, but not limited to, fire, storm, flood, drought, earthquake, explosion, war, invasion, rebellion, terrorism, sabotage, epidemic, pandemic, public health emergency, labour dispute, labour shortage, failure or delay in transportation and act or omission (including laws, regulations, imposition of sanctions, embargoes, restriction, prohibition, disapprovals or failures to approve) of any third person (including, but not limited to, public authorities, governments or government agencies other than us).

User means the person or entity that accepts these Terms or the employer or entity that has authorised the person to accept these Terms on behalf of them, which person or entity may include an Accredited Assessor, a Rater or other user not producing ratings for NCC compliance (e.g. researchers).

'we', 'us' or 'our' means the Software Provider.

'website' means www.accurate.gov.au.

'you' or 'your' means the User.

2. NatHERS Software Accreditation Protocol

2.1 We are responsible for obtaining accreditation under the NatHERS of any modified version of AccuRate Enterprise. You agree to provide us with your reasonable assistance in connection with our accreditation or any audit, review or evaluation of NatHERS undertaken by NatHERS Administrator.

2.2 You agree to comply with the NatHERS Software Accreditation Protocol (SAP) to the extent the protocol applies to your responsibilities under this Agreement when using the Application, to demonstrate compliance with the NCC Deemed-to-Satisfy NatHERS pathway or the NSW Building Sustainability Index (BASIX), including adherence to the terms and conditions in Appendix 1 of the SAP.

2.3 You acknowledge we have responsibilities to the NatHERS Administrator and AAOs, and we may be directed by the NatHERS Administrator or an AAO to take certain steps or action, and where applicable to you, you will reasonably comply with those steps or action.

2.4 You must comply with these NatHERS documents:

- (a) the Technical Note(s);
- (b) Certified Trademark Guidelines;

- (c) the NatHERS Trademark Terms of Use set out in the guidelines for using the NatHERS logo and any state and territory requirements (e.g. BASIX requirements);

available at www.nathers.gov.au.

2.5 You agree not to use the Application for NCC Verification Using Reference Building compliance pathway, neither in regulation nor non-regulation mode (as defined in the SAP).

3. Application

3.1 We will provide you with access to the Application and Data for the Purpose in accordance with these Terms.

3.2 We will use reasonable endeavours to maintain the availability and integrity of the Application but do not guarantee that:

- (a) there will be no technical interruptions to the Application, bugs or errors;
- (b) all Project Information and Data will be uploaded without errors; or
- (c) the Data will be accurate and complete.

3.3 You must notify Support Contact of any interruptions, errors or other problems experienced by your use of the Application, and we will use reasonable endeavours to rectify them as soon as possible during our standard business hours.

4. Access and Use of Application

4.1 We will provide Authorised Users with access codes or passwords to enable them to access and use the Application and Data.

4.2 You must implement measures to ensure any Authorised Users you have authorised to access the Application are informed of their obligations under these Terms, including without limitation:

- (a) only use the Application to generate a NatHERS Certificate if you are an Accredited Assessor, and ensure a name and valid AAO assessor accreditation number are entered into the Application;
- (b) not to allow unauthorised persons to have access to the Application or Data and to notify us of any unauthorised access to the Application or unauthorised use of any Data;
- (c) not alter a NatHERS Certificate or NatHERS Rating Report after it is generated, or alter Data, with the exception that Authorised Users may enter and change their own Project Information provided it is in compliance with these Terms;
- (d) not to attempt to override any security or protective measures embedded in the Application to protect the integrity of the Application or to secure our proprietary rights to the Application;
- (e) to comply with all reasonable directions given by our Personnel as to the use of any access

codes, passwords or other security measures implemented by us to protect the integrity of the Application;

- (f) not to modify, translate, adapt or create derivative works or improvements to the Application; and
- (g) not to use the Application for any incompetent, fraudulent or dishonest activities or Detrimental Use.

4.3 You will comply with any reasonable request made by us to remove or suspend access to the Application for an Authorised User where we are of the reasonable opinion such Authorised User has not complied with clause 4.2.

4.4 Unless otherwise agreed with you in writing, any feedback, modifications or improvements and the like made by you or your Authorised Users with respect to the Application (**Supportive Information**) will be our property. You agree to assign, and hereby assign, all right, title and interest worldwide in the Supportive Information and the related IP rights to us. We may disclose or use the Supportive Information for any purposes whatsoever without any obligation to you.

5. IP Rights

5.1 The Application and Documentation have been developed by us and we retain rights to IP in same.

5.2 Nothing in these Terms is to be construed as giving you a licence or other rights to the Application or the Documentation except as expressly set out in these Terms. If you desire additional rights, then this will be the subject of a separate written agreement between you and us.

5.3 Except for the express warranties given in this Agreement, CSIRO does not give any assurance that your use of the Application will not infringe the rights of any third person.

6. Data

6.1 We will receive Data via the Application.

6.2 You grant to us an irrevocable, worldwide, perpetual, royalty free licence to use, reproduce, modify, adapt, and communicate the Data and to sublicense the Data to third parties (including for a fee) for CSIRO's purposes.

6.3 You consent to us providing Data and Your Personal Information to:

- (a) the NatHERS Administrator, including where NatHERS Administrator identifies Detrimental Use by you or an Authorised User, as part of the NatHERS Administrator's audits, quality assurance activities or investigations for NatHERS Integrity Purposes;
- (b) if applicable, your AAO, including as part of the AAO's quality assurance activities;

(c) any other person, organisation or government agency authorised by NatHERS Administrator or in compliance with law.

6.4 We do not give any guarantee that we will keep back-up copies of Data and you agree that we will not be responsible for any loss of Data.

7. Fees, Account and Payment

7.1 You will be charged a Fee for each Transaction.

7.2 We may change the Fee once in any year on 60 days' notice to you, by notifying you via your registration email address and by posting a notice on the website.

7.3 To process a Transaction, you must pre-purchase the value of the Transaction (**Pre-Purchase Transaction**) by following the purchase process on the website. You may be charged a credit card surcharge fee. You may only purchase Pre-Purchase Transactions to a total value of less than \$5,000 in any one transaction.

7.4 When you process a Transaction, we will automatically deduct the Fee for that Transaction from the oldest Pre-Purchase Transactions recorded in your account balance at that time.

7.5 While you have an active account with us, you may view your account balance at any time by logging into the Application.

7.6 Pre-Purchase Transactions are not refundable and you will not earn interest on any pre-purchase transactions.

7.7 We strongly recommend that you carefully consider the number of Pre-Purchase Transactions you purchase. Any Pre-Purchase Transactions you have in your account at the date we increase a Fee for a Transaction, will be available for you to redeem for a period of sixty (60) days after the date of the Fee increase. A Pre-Purchase Transaction purchased at a lesser value Fee remaining in your account on expiry of sixty (60) days after the date of the Fee increase, will not be available for you to use to process any Transaction and the value will not be refunded to you.

7.8 All amounts payable under these Terms are exclusive of GST. If GST is payable by a supplier on any supply made under this Agreement, the recipient upon receiving a tax invoice from the supplier, will pay the supplier an amount equal to the GST payable on supply. In this clause, words and expressions which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as in that Act.

8. Record Keeping and Audit

8.1 You must keep complete and proper records, books of account, documents, and information including without limitation copies of all Project Information (**Records**) connected with your use of the Application and your compliance with your obligations under these Terms.

- 8.2** Upon written request and within a reasonable period, you will provide us and any person, organisation or government agency authorised by us with access to (and where relevant, copies of) the Records which we or the NatHERS Administrator reasonably consider necessary to satisfy us that you and your Authorised Users are continuing to comply with the requirements of NatHERS and these Terms.
- 8.3** You must retain the Records for seven years from the date of creation.
- 8.4** You must obtain and hold for a minimum of seven years a signed consent from the Client or person for whom a NatHERS assessment is performed by you or your Authorised User, that informs the Client that you may collect Personal Information, including their name, telephone number and email address, or other information, (where applicable) and that you may provide this information to us, the NatHERS Administrator, and applicable AAO (or their nominees) for the purposes of quality assurance, investigation, and audit, including consent for us, NatHERS Administrator, or applicable AAO (at their discretion) to contact such person in relation to any findings from such investigations and audit relevant to that person.
- 8.5** For the purpose of quality assurance or audit activities, you agree for us to give the NatHERS Administrator and applicable AAO (or their nominees) all relevant information (including Personal Information) and material relevant to your use of the Application, the assessments performed, and the NatHERS Certificates or NatHERS Rating Reports generated. These may be forwarded to the relevant regulatory authority.
- 8.6** In accordance with your obligations under the SAP, you agree to participate in and cooperate with any investigation or audit conducted by the NatHERS Administrator and your activities in relation to NatHERS.
- 9. Support and Maintenance**
- 9.1** We will provide software maintenance and support for Major Defects only via a helpdesk during our normal business hours. You may contact our helpdesk by emailing AccurateEnterprise@csiro.au. We recommend you review our Documentation, which includes user manuals and help files, prior to contacting the helpdesk.
- 9.2** We will not provide support in respect of any defect or error in the Application arising from:
- (a) use of the Application in combination with other software, computer programs, data, hardware, devices, systems, interfaces or components not supplied or recommended by us;
 - (b) operation of the Application except in accordance with the requirements set out in the Documentation; or
 - (c) external causes such as electrical discharge, computer viruses, worms, trojans or other forms of malware, unless caused or contributed to by us.
- 9.3** Except as provided in this clause, you are solely responsible for providing support to your Authorised Users and Clients in relation to the Application.
- 10. Updates**
- 10.1** Except as provided in this clause, we do not undertake to develop Updates. If we do develop an Update, an Update is deemed 'Application', and related documentation is deemed 'Documentation', and is subject to these Terms.
- 10.2** We are not obligated to maintain the current or future functionality and may remove non key features of the Application from time to time.
- 10.3** The Application may require re-testing for accreditation before release of an update.
- 11. Privacy**
- 11.1** If you deal with Personal Information which is collected or received in connection with your use of the Application, you must:
- (a) use or disclose Personal Information only for the purposes of the Application or this Agreement and in accordance with applicable privacy law;
 - (b) not do any act or engage in any practice that would breach an Australian Privacy Principle under the Privacy Act; and
 - (c) immediately notify us if you become aware of an actual or possible breach of any of your obligations under this clause.
- 11.2** You must ensure that, without limiting clause 8.4:
- (a) Authorised Users provide appropriate consent to the disclosure and use of their Personal Information collected by you or your Authorised Users; and
 - (b) you and Authorised Users obtain from Clients who you collect Personal Information from, an appropriate consent to the disclosure and use of the Client's Personal Information,
- to and by us, the AAOs, the NatHERS Administrator, and any person, organisation or government agency authorised by us, AAOs or NatHERS Administrator (or their nominees), to the extent necessary for such persons to conduct the activities and purposes described in these Terms.
- 11.3** You and your Authorised User's confirmation that the consents detailed in this clause and clause 8.4 have been obtained must be recorded by you prior to the generation of a NatHERS Certificate or NatHERS Rating Report.
- 12. Insurance**
- 12.1** You must have and maintain during the term of this Agreement:

- (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 your 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.

12.2 You must, on request, provide to us any relevant insurance policies and certificates of currency for inspection, by the date specified in the request.

13. Confidential Information

13.1 Confidential Information is to be kept confidential.

13.2 You must promptly notify us if you: (a) become aware of any unauthorised disclosure of Confidential Information; or (b) are required by law to disclose any Confidential Information belonging to us.

13.3 You undertake to implement appropriate security practices to prevent any unauthorised copying, use or disclosure of the Confidential Information.

13.4 We may disclose the Confidential Information if required by law, but only to the extent of the legal requirement and after appropriate action is taken to protect the form and content of the disclosure.

13.5 Notwithstanding the foregoing in this clause, we may disclose Confidential Information to:

- (a) a responsible authority if we, acting reasonably, deem the information to expose or relate to a potential risk to public health or safety;
- (b) our responsible government Minister or in response to a request by a House of Parliament, a Committee of Parliament or Senate Order.

14. Warranties and Liability

14.1 You represent and warrant that:

- (a) you have full power and authority to enter into, and perform your obligations under the Agreement;
- (b) you have taken all necessary action to authorise the execution, delivery and performance of the Agreement; and
- (c) the Agreement constitutes legal, valid and binding obligations on you.

14.2 Except for the express warranties given in this Agreement, we do not otherwise guarantee, and accept no legal liability whatsoever arising from, or connected to, the accuracy, reliability, currency or completeness of the results generated by the Application.

14.3 This Agreement does not exclude, restrict or modify any guarantee, condition, warranty, right or liability implied into it by Law (including the Competition and Consumer Act 2010), the exclusion, restriction or modification of which would contravene the Law or cause this Agreement to be void (Non-Excludable Consumer Warranties). The terms of this Agreement are at all times to be read subject to such Non-Excludable Consumer Warranties and applied only to the extent permitted by Law.

14.4 We exclude all terms, conditions, warranties and guarantees implied by custom, the general law or statute, except any Non-Excludable Consumer Warranties. Our liability to you for breach of any Non-Excludable Consumer Warranty is limited, at our option, to repair or replacement of the Application or providing a Transaction again.

14.5 To the extent permitted by Law, we exclude all liability for any defect, damage, loss, death or injury including loss of Data, information, revenue, profit or business opportunity or for any damage to goodwill or reputation which is suffered by you, an Authorised User or a Client in any way arising from your or an Authorised User's use of the Application or as a result of your or an Authorised User's compliance or failure to comply with any technical standards or regulatory requirements or use or reliance on a NatHERS Certificate or NatHERS Rating Report.

14.6 To the extent allowed by law, except to the extent directly caused by our negligence:

- (a) you release us from and against all claims, actions, demands, suits, liability, loss or expense arising directly or indirectly from your use of the Application; and
- (b) you indemnify us and our officers, employees and contractors from and against any damage, loss or expense (including those incurred in defending or settling any claims, actions or demands) sustained by us arising out of your use of the Application and/or breach of these Terms.

Your obligation to indemnify us and our Personnel will reduce proportionally to the extent any act or omission involving fault on the part of us and our Personnel contributed to the claim, loss or damage.

14.7 We may suspend, withdraw or restrict the availability of all or any part of the Application for reasonable business and operational reasons. We will try to give you reasonable notice of any suspension, withdrawal or restriction by informing you via your registration email address or by providing a notice on the website.

15. Dispute Resolution

15.1 Any dispute, controversy or claim arising out of or in connection with the Agreement, including its existence, breach, validity or termination (**Dispute**)

must be dealt with in accordance with this clause. This clause does not prevent any of us from seeking urgent injunctive or similar interim relief from a Court.

15.2 Any of us claiming that there is a Dispute must notify each other in writing and give details of that Dispute.

15.3 If the Dispute is not resolved within 90 days from the date that the written notice of the Dispute is received, then the Dispute must be submitted to mediation in accordance with, and subject to, the Australian Disputes Centre (ADC) Rules. The mediation must take place in Melbourne, Australia and be administered by the Australian Disputes Centre (ADC).

15.4 If the Dispute cannot be resolved within 90 days (unless this period is extended by our mutual agreement in writing) from the date it is submitted for mediation, then the Dispute must be resolved by arbitration in accordance with the ADC Arbitration Rules.

15.5 There is to be one arbitrator and the place of arbitration is Melbourne, Australia. All hearings will take place in private unless agreed otherwise in writing. The decision of the arbitrator (including any award as to costs) will be final and binding. We may, if required, disclose any information regarding the arbitration to its responsible government Minister, House of Parliament or a Committee of Parliament.

16. Term, Suspension and Termination

16.1 This Agreement continues unless otherwise terminated in accordance with this clause.

16.2 We may suspend or terminate your access and right to use the Application immediately or on notice where:

- (a) we reasonably believe you are not complying with these Terms or are in breach of the Agreement;
- (b) if, following the NatHERS Administrator's or an AAO's conduct of quality assurance activities or investigations of you or an Authorised User, it is determined that incompetent, fraudulent or dishonest activities may have occurred, and we receive written notice from the NatHERS Administrator or an AAO to suspend or terminate your access to the Application;
- (c) the NatHERS Administrator reasonably directs us to seek to remedy or mitigate any Detrimental Use by you or an Authorised User;
- (d) your or an Authorised User's actions have the potential to bring us or NatHERS into disrepute;
- (e) our NatHERS accreditation notice expires or terminates;
- (f) if your account becomes inactive for a period of 2 years or more and you do not respond to us after ninety (90) days of us giving written notice to you of our intention to terminate your access and close your account.

16.3 In circumstances other than a breach of this Agreement or as set out in clause 16.2, we will give you notice of suspension or termination via your registration email address or by posting a notice on the Application. Once you receive notification, you will have 90 days to continue using the Application before your rights to access the Application cease.

16.4 Termination does not affect or limit our ability to claim damages or other compensation for breach of this Agreement or our rights at law. You agree that damages may not be appropriate as an exclusive remedy in respect of all breaches of this Agreement and we will be entitled to seek and obtain an injunction to prevent any alleged breach of this Agreement, in addition to any right to recover damages.

16.5 If either you or us breach this Agreement and that breach is not remedied within 30 days after receipt of notice to remedy, then the other may terminate this Agreement by written notice.

16.6 On termination for breach of this Agreement by you, you acknowledge that any Pre-Purchase Transactions remaining in your account on termination will not be available for you to use to process any Transaction and the value will not be refunded to you.

17. Use of Our Name

You must not use CSIRO's name or trademarks in a manner that suggests CSIRO endorses or is associated with your business, products or services.

18. General

18.1 This Agreement records our entire agreement and supersedes all earlier agreements and representations that may have been made by either of us in relation to the Application or this Agreement.

18.2 The Agreement is governed by and construed in accordance with the laws of Victoria, Australia and you agree to submit to the jurisdiction of the courts in that State.

18.3 If any term of this Agreement is prohibited, void or unenforceable under any applicable law, it will be severed to the extent necessary to make this Agreement valid and enforceable. The severance of a term will not affect the validity or enforceability of the remaining terms of the Agreement.

18.4 We may, at our discretion, make changes to these Terms and will endeavour to give you at least 60 days written notice prior to the change taking effect via your registration email address and by providing a notice on the website. If we reasonably consider that the change(s) to these terms are of a minor nature, then we may give you a reasonable shorter period of written notice of the change.

By continuing to access the Application on or after the date that the change is notified to take effect, you accept the changes to the Terms.

If you do not accept the changes to the Terms:

- (a) you must notify us in writing prior to the date that the change takes effect;
- (b) your access and right to use the Application will terminate on the date prior to the date that the change to the Terms takes effect;
- (c) any Pre-Purchase Transactions you have in your account will be available for you to redeem prior to termination of your access and right to use the Application, being the date prior to the date that the change to the Terms takes effect;
- (d) any Pre-Purchase Transactions remaining in your account on termination will not be available for you to use to process any Transaction and the value will not be refunded to you.

18.5 Notwithstanding any provision in these Terms, we may assign or novate any of our rights and obligations under the Agreement.

18.6 The following clauses survive termination of the Agreement: clause 2, 4.4, 5, 6, 8, 11, 13, 14, 15, 17 and 18.

19. Unexpected Events

19.1 We are not liable for any delay or failure to perform our obligations under these Terms if such a delay is due to an Unexpected Event.

19.2 If a delay or failure by us to perform our obligations is caused or anticipated due to an Unexpected Event, the performance of our obligations will be suspended until the Unexpected Event has ended.

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