

Terms and Conditions of Appointment

NHBC Services Limited – Sustainability & Energy services (Code for Sustainable Homes/Ecohomes/BREEAM Assessments and associated services)

1. Definitions

- 1.1. The capitalised words and expressions used in these terms and conditions shall have the meanings given in schedule 1.
- 1.2. Save to the extent that the context or the express provisions of these terms and conditions otherwise require:
 - 1.2.1. headings and sub-headings are for ease of reference only and are not to be taken into consideration in the interpretation or construction of these terms and conditions;
 - 1.2.2. 'person' includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency or unincorporated body of persons or association;
 - 1.2.3. words expressed in the singular shall include the plural and vice versa;
 - 1.2.4. the words 'other' and 'otherwise' are not to be construed ejusdem generis with any foregoing words where a wider construction is possible;
 - 1.2.5. the words 'including' and 'in particular' are to be construed as being by the way of illustration or emphasis only and are not to be construed as, nor shall they take effect as, limiting the generality of any foregoing words.
- 1.3. A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re enactment thereof.

2. Acceptance of Services

- 2.1. Acceptance by the Client of an offer contained in a quotation issued by NHBCSL and addressed to the Client shall result in the formation of a separate contract on these terms and conditions between NHBCSL and the Client, for the Services and the Development (both as described in the quotation).
- 2.2. Acceptance by NHBCSL of a completed web order form completed on NHBCSL's website shall result in the formation of a separate contract between NHBCSL and the Client, for the Services and for the Development (both as described in the quotation).

3. Services to be Performed

- 3.1. NHBCSL will provide the Services with reasonable skill and care.
- 3.2. When providing Services NHBCSL will use reasonable endeavours to assist the Client in optimising the Sustainability Rating that can be achieved by the Development, but NHBCSL does not warrant that any particular Sustainability Rating will be achieved by the Development.
- 3.3. NHBCSL will use reasonable endeavours to co-operate with the Client and the Client's Professional Team and provides the Services in conjunction with the Client's programme of work for the Development.
- 3.4. Where dates or times for the delivery of the Services are specified in a Contract, time shall not be of the essence. Where dates or times for the delivery of the Services are stipulated otherwise then in a Contract, they shall not be binding on NHBCSL.
- 3.5. NHBCSL will at the Client's request co-operate with and provide information concerning the Services to the Client's Professional Team and will supply relevant information to those parties in accordance with any request from the Client. NHBCSL reserves the right to treat such activities as Additional Services.
- 3.6. If there is a dispute or difference with the Scheme Provider or any other accreditation body concerning the interpretation of Regulations, at the Client's request NHBCSL will provide Additional Services to assist the Client in making any necessary submissions or applications to resolve the matter.

4. Additional Services

NHBCSL will provide and the Client will pay for the following ('Additional Services') as follows:

- 4.1. If any additional work (including site inspection, perusal of documents and/or attendance at meetings) in addition to the work that in NHBCSL's reasonable opinion would be required to provide the services initially specified in a Contract, is:
 - 4.1.1. requested by the Client;
 - 4.1.2. necessitated by any change or delay in the scheduled programme of works for the Development;
 - 4.1.3. necessitated by any change to the design of the Development;



- 4.1.4. necessitated by any change to the Regulations or any of the assessment criteria or calculation methodologies applicable to the Services;
- 4.1.5. necessitated by the Client's Default;
- 4.1.6. necessitated by an event of Force Majeure.
- 4.2. If the Scheme Provider declines to issue an interim design-stage certificate, for the Code for Sustainable Homes Design Stage Assessment or BREEAM Design Stage Assessment, NHBCSL shall at the request of the Client prepare a revised report and submit it to the Scheme Provider and the Client shall pay for the additional work involved as Additional Services.
- 4.3. If the Scheme Provider declines to issue a final certificate, for the Code for Sustainable Homes Post Construction Stage Assessment, BREEAM Post Construction Review NHBCSL shall at the request of the Client prepare a revised report and submit it to the Scheme Provider and the Client shall pay for the additional work involved as Additional Services.
- 4.4. If following receipt of the Services the Client wishes to achieve a higher Sustainability Rating than that originally required by the Client, NHBCSL shall at the request of the Client prepare revised submissions and submit them to the Scheme Provider and the Client shall pay for the additional work involved as Additional Services.

5. The Client's Obligations

- 5.1. The Client will promptly provide NHBCSL with all information (including drawing and calculations) and assistance (including access to representatives of the Client and the Client's Professional Team) that is reasonably requested by NHBCSL in connection with the provision of the Services. Failure or delay in doing so may result in NHBCSL being unable to carry out the Services fully, or at all.
- 5.2. The Client will designate and notify to NHBCSL one person, who shall be NHBCSL's point of contact for the purposes of dealing with all matters concerning the Services and who will have sufficient authority to take any action required to ensure compliance by the Client with these terms and conditions.

6. Access and Safety

- 6.1. The Client shall arrange for NHBCSL's personnel to have access to the Development at all reasonable times as necessary for NHBCSL to provide the Services.
- 6.2. NHBCSL shall ensure that its personnel comply with the Client's reasonable instructions in relation to their conduct when visiting the Development.
- 6.3. The Client shall ensure that Health and Safety Requirements are complied with at the Development.
- 6.4. NHBCSL reserves the right to suspend provision of the Services when in NHBCSL's reasonable opinion the condition of the Development would put at risk the health and/or safety of the NHBCSL employee(s) assigned to carry out the Services.

7. Documentation

- 7.1. The copyright and all other intellectual property rights in documents and other material prepared by NHBCSL in connection with the provision of the Services shall belong to NHBCSL and NHBCSL hereby grants to the Client a right to use such copyright and other intellectual property rights to the extent necessary for the Client to make use of the Service for the Client's own internal purposes, but not (unless NHBCSL gives its written consent) for the benefit of any third Party.
- 7.2. NHBCSL shall maintain accurate and reasonably detailed records of all work done by NHBCSL in the provision of the Services for a period of six (6) years from the date of the applicable Final Certificate.

8. Payment

- 8.1. The Client shall pay for the Services at the rates stated within NHBCSL's quotation, or the web application form and pay for any Additional Services at the rates for the Additional Services notified by NHBCSL to the Client.
- 8.2. The rates of charge stated in any quotation or web application form and any rates quoted for Additional Services are in each case stated exclusive of VAT which shall, where applicable, also be payable by the Client.
- 8.3. The Client will at NHBCSL's request reimburse NHBCSL for all expenses (including fees and other disbursements paid by NHBCSL to the Scheme Provider) reasonably incurred by NHBCSL in connection with the Services. If any fees or other disbursements are specified in a quotation or web application and have increased by the date at which they are actually paid, then the increased rates will apply.
- 8.4. The fees for Services comprising the Code for Sustainable Homes Assessment will be invoiced as follows:
 - 8.4.1. 35% of the total fee will be invoiced when NHBCSL starts the work following receipt of a Confirmation Form;
 - 8.4.2. 35% of the total fee will be invoiced on completion of the Design Stage Assessment when work is submitted to the Scheme Provider for review;
 - 8.4.3. the balance of the total fee will be invoiced following submission of the first Post Construction Stage Assessment report to the Scheme Provider.
- 8.5. The fees for Services comprising BREEAM Design stage assessment will be invoiced as follows:
 - 8.5.1. 50% of the total fee will be invoiced when NHBCSL starts the work following receipt of a Confirmation Form;
 - 8.5.2. 50% of the total fee will be invoiced when design stage Sustainability Assessment Report is sent to the Scheme Provider for certification;
 - 8.5.3. In all cases, the total certification fee incurred by NHBC for this assessment from the Certification body will be payable by the client. BRE now charge 10% of total certification fee upon registering the site - this fee will be payable by you when it is incurred by NHBC. If design stage certification is achieved within 3 years this 10% fee is discounted off the final certification fee. Registration with BRE will occur when initial work starts unless stated otherwise.

- 8.6. The fees for Services comprising BREEAM Post Construction Review Assessments will be invoiced as follows:
 - 8.6.1. 50% of the total fee will be invoiced upon starting the Post Construction Review Assessments.
 - 8.6.2. 50% of the total fee will be invoiced when the final PCR dwelling type report is submitted to the Scheme Provider.
- 8.7. The fees for Services comprising Energy Ratings or SBEM assessments will be invoiced as follows:
 - 8.7.1. 100% of the total fee for the Design Stage Energy Rating will be invoiced upon completion of a dwelling's energy assessment.
 - 8.7.2. Payment for 'on-completion' Energy performance certificates will also be invoiced when the certificate is ready - unless otherwise stated by NHBCSL.
- 8.8. Additional Services will be invoiced monthly in arrears.
- 8.9. The Client shall pay each invoice within twenty eight days (28) days of the invoice date.
- 8.10. If any invoice is not paid by the Client by the due date, or the Client is in arrears in respect of any sum due to any other NHBCSL Company, NHBCSL reserves the right to suspend the provisions of the relevant Services until all such sums have been paid and NHBCSL shall not be liable for any delay to the Development that results from the suspension.
- 8.11. If any sum payable by the Client is not paid by the due date it shall be paid with interest on the overdue amount calculated at the rate of 5% above the Bank of England's base lending rate for the whole period from the date upon which the sum ought to have been paid until the date of payment (whether before or after any judgement).
- 8.12. Subject to Clause 9, if a Contract is terminated, howsoever arising, the Client shall pay NHBCSL any instalments of the fees due up to the date of termination and a fair and reasonable proportion of the next instalment of the fees based on the amount of the Services provided prior to termination.
- 8.13. NHBCSL may without notice to the Client combine, consolidate or merge all or any of the liabilities of the Client to NHBCSL and may set off or transfer any sums from time to time owed by the Client to NHBCSL in or towards the satisfaction of any of those liabilities.

9. Early Cancellation

- 9.1. The Client may cancel the provision of the Services before they have been completed by giving written notice to NHBCSL. On receipt of such a notice:
 - 9.1.1. NHBCSL will cease to provide the Services and Additional Services and (at NHBCSL's option):
 - 9.1.1.1. the Client shall pay NHBCSL any instalments of the fees due up to the date of termination and a fair and reasonable proportion of the next instalment of the fees based on the amount of the Services; or
 - 9.1.1.2. the Client shall pay NHBCSL a percentage of the total fees that were originally quoted for the Sustainability Assessment, according to the table in schedule 2; or
 - 9.1.1.3. Where NHBCSL's energy rating services have been included in the fee quotation and/or service provided, our standard cancellation terms for energy rating services are applicable, as follows: In the event of cancellation by the client NHBCSL will issue a revised invoice. If the job is cancelled within one week of the order having been placed 50% of the energy rating fee will be refunded, within two weeks 25% of this fee will be refunded. No refund will be given if the order is cancelled more than two weeks after the order has been placed. In all cases if the energy rating work has been completed or substantially completed no refund will be given.
 - 9.1.2. NHBCSL will not be liable for any reliance placed by the Client on the uncompleted Services.

10. Termination

- 10.1. Either Party may immediately terminate a Contract by giving written notice to terminate to the other Party if any of the following occurs:
 - 10.1.1. the other Party breaches any of the provisions of the Contract (and, if capable of remedy, such breach has not been remedied within fourteen (14) days of the breach being notified to it in writing); or
 - 10.1.2. a Court makes an order that either Party be wound up or a resolution for a voluntary winding up of either Party is passed;
 - 10.1.3. an order is made for the appointment of an administrator to manage the affairs, business and property of either Party or documents are filed with a court of competent jurisdiction for the appointment of an administrator or notice of intention to appoint an administrator is given by either Party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);
 - 10.1.4. any receiver or manager in respect of either Party is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;
 - 10.1.5. any voluntary arrangement is made for the composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 1985 in respect of either Party;
 - 10.1.6. either Party is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.
- 10.2. A Contract may be terminated by NHBCSL by give not less than fourteen (14) days written notice to the Client if, in NHBCSL's reasonable opinion, the Client has failed to supply any information or assistance reasonably requested by NHBCSL.
- 10.3. A Contract may be terminated by NHBCSL by giving not less than fourteen (14) days written notice to the Client if, in NHBCSL's reasonable opinion, the Client has made a material change to the programme of works for the Development.

11. Liability

- 11.1. The Client will indemnify NHBCSL against any costs, losses damages or expenses that NHBCSL becomes liable for or exposed to as a result of any act or omission by the Client or its Professional Team during or in connection with the provision of the Services.

12. Limitation and mitigation

- 12.1. Neither Party excludes or limits liability to the other Party for death or personal injury caused by negligence, or for liability arising as a result of fraud.
- 12.2. Subject always to clause 12.1, NHBCSL's aggregate liability to the Client for any Default shall be limited in accordance with clauses 12.3 to 12.5 and 12.7.
- 12.3. Without prejudice to any other exclusion or limitation of liability, for each Contract the aggregate liability of NHBCSL for any loss and/or damage in respect of any Default shall be limited to that proportion as it would be just and equitable for NHBCSL to pay having regard to the extent of its responsibility for the loss and/or damage and on the assumptions that:
 - 12.3.1. all other parties (including consultants, advisors, contractors, subcontractors and project managers) engaged in connection with the Development have provided contractual undertakings on terms no less onerous than those in the Contract in respect of their obligations in connection with the Development;
 - 12.3.2. there are no exclusions of or limitations of liability nor joint insurance or co-insurance provisions agreed between the Client and any other Party referred to in this clause and any such other Party who is responsible to any extent for the loss and damage is contractually liable to the Client for the loss and damage;
 - 12.3.3. all the parties referred to in this clause have paid to the Client such proportion of the loss and damage which it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage.
- 12.4. Subject always to clause 12.1, in no event shall either Party be liable to the other for any one or more of the following that are sustained or incurred by the other in consequence of a Default; delayed completion of the Development, loss of profit, loss of business, loss of revenue, loss or impairment of goodwill, loss of opportunity, loss of anticipated savings, indirect loss or damage, and/or consequential loss or damage.
- 12.5. Without prejudice to any other exclusion or limitation of liability, for each Contract the total aggregate liability of NHBCSL for all loss and/or damage in respect of all Defaults occurring in connection with the same Contract shall in no event exceed the lesser of:
 - 12.5.1. ten times the amount of the fees payable under the Contract; and
 - 12.5.2. five million pounds sterling (£5,000,000.00).
- 12.6. The Client shall use its best endeavours to mitigate any and all losses, costs and expenses incurred as a result of any Default.
- 12.7. For the avoidance of doubt the amount referred to in Clause 12.5.1 does not include any amounts payable by the Client for products or services provided by any other NHBCSL Company, even if they are referred to in a quotation or web application.

13. Disputes and complaints

- 13.1. If the Client is not satisfied with NHBCSL's performance of the Services, without prejudice to its other rights and remedies, the Client is entitled to request that NHBCSL investigate the matter in accordance with NHBCSL's complaints handling procedure, details of which can be obtained on request or from www.NHBCSL.co.uk.

14. Rights of third parties

Third parties have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce the terms of any Contract, but this does not affect any right or remedy of a third Party which exists or is available otherwise than under that Act.

15. Intellectual Property Rights

- 15.1. All intellectual property rights, including, any copyright which may arise in any document or report including but not limited to, any proprietary materials, drawings or graphic works, which may be discovered or produced during or incidental to the performance of the Services, whether by NHBCSL alone or jointly with NHBCSL, shall be the property of NHBCSL.
- 15.2. All information, documents, reports, plans, drawings or other such materials produced by or for the Client in connection with the Services shall belong to the Client, but the Client will make any such materials available for the use of NHBCSL where necessary for the performance of the Services.

16. Confidential Information

- 16.1. Each Party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information to any third Party without the prior written consent of the other and agrees not to use such Confidential Information for any purpose other than that for which it is supplied in connection with a Contract.
- 16.2. The obligations of confidence referred to in Clause 16.1 shall not apply to any Confidential Information which:
 - 16.2.1. is in, or which comes into, the public domain otherwise than by reason of a breach of the this Clause, or any other duty of confidentiality relating to that information; or
 - 16.2.2. is obtained from a third Party without that third Party being under any obligation (express or implied) to keep the information confidential; or
 - 16.2.3. is lawfully in the possession of the other Party before the date of the Commencement of the Services and in respect of which that Party is not under an existing obligation of confidentiality; or
 - 16.2.4. is independently developed without access to the Confidential Information of the other Party.
- 16.3. Each Party will be permitted to disclose Confidential Information to the extent that it is required to do so:
 - 16.3.1. to enable the disclosing Party to perform its obligations under a Contract; or
 - 16.3.2. by any applicable law or by order of a court;

- 16.3.3. by any regulatory body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or
- 16.3.4. in order to give proper instructions to any professional advisor of the disclosing Party who also has an obligation to keep any such Confidential Information confidential.

17. Notices

Unless otherwise agreed, any notice or request required or permitted to be given under or in connection with a Contract shall be given in the English language in writing by prepaid registered or first-class mail, or facsimile to the recipient at its address as set out in the relevant Quotation, or web application form or to such other address or addressee as may have therefore been furnished in writing by the recipient to the sending Party in accordance with this clause.

18. Force majeure

Neither Party shall be in default of or liable for breach or delay in performance of its obligations under a Contract or be liable to make payment to the other or otherwise liable for any losses or damages whatsoever arising out of the prevention, hindrance or delay of the performance of any of its obligations to the extent that the performance of such is prevented or hindered by the occurrence of any event of Force Majeure.

19. Entire Agreement

Each Contract (comprising the contents of the quotation or web application form and these terms and conditions) is the entire agreement between NHBCSL and the Client with respect to the subject matter of the quotation or web application form and (except in the case of fraud) shall not be subject to, or modified by, any prior representations or agreements, written or oral, except as otherwise expressly indicated herein.

20. Assignment

The Client shall not assign or otherwise transfer the benefit of any Contract without NHBCSL's prior written approval, which shall not be unreasonably withheld or delayed.

21. Severability

Each of the obligations contained in the paragraphs and sub-paragraphs of this Agreement shall be construed as separate and severable. If at any time any one or more of the obligations is or becomes invalid, illegal or unenforceable in any respect under law but would be valid if some part thereof were deleted or the period or area of application reduced that obligation will apply modified as may be necessary to make it valid and effective. The validity, legality and enforceability of the remaining paragraphs and sub-paragraphs will not in any way be affected or impaired thereby.

22. Governing Law

These terms and conditions shall be governed by and interpreted in accordance with the laws of England and Wales and is subject to the jurisdiction of the Courts of England. In the event of litigation arising out of or in connection with a Contract the Courts of England and Wales shall have exclusive jurisdiction to settle any Claim, difference or Dispute (including set-offs and counterclaims) arising out of or in relation to the Contract.

Schedule 1

Word or expression	Meaning
Additional Services	Is defined in Clause 4.
BRE	Building Research Establishment.
BREEAM	Building Research Establishment Environmental Assessment Method, referring to any of the assessments including Ecohomes.
Client	The person, firm or company identified as the Client in a quotation, or web application form
Client's Professional Team	The contractors, consultants and professional advisors (other than NHBCSL) appointed by the Client to undertake the Development.
Confidential Information	Means in all information (whether in writing, oral or in any other form including documents, computer records, specifications, formulae, evaluations, methods, processes, technical drawings, financial and other plans and estimates) obtained directly or indirectly from either Party or arising or acquired pursuant to or in anticipation of a Contract
Contract	A contract between NHBCSL and the Client, which is entered in to in accordance with Clause 2.1 or 2.2, (comprising the contents of the quotation, order form or web application form and these terms and conditions).
Default	Any breach of the obligations of either Party under a Contract or any default, act, omission, negligence or statement of either Party in relation to the subject matter of a Contract and in respect of which the Party is liable to the other Party.
Development	means for each Contract the site and/or or building described in a quotation, or web application form

Force Majeure	Any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) emergency governmental regulations, fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquakes, any disaster, war, civil war or armed conflict, acts or threats of terrorism, nuclear, chemical or biological contamination, pressure waves caused by aircraft, riot or civil commotion, failure in whole or in part by a statutory undertaker, utility company, local authority or other like body to carry out works or provide services, any accidental loss or damage to the parties' premises, or any road servicing those premises, any failure or shortage of power, fuel or transport, any blockade or embargo; provided that any such event is beyond the reasonable control of the Party claiming relief and does not arise from any act, omission, negligence or wilful default of that Party.
Health and Safety Requirements	Means each and every one of the Client's legal duties applicable to the health and/or safety of persons visiting the Development, which are applicable on the date or dates on which NHBCSL personnel are visiting the Development
NHBCSL	NHBCSL Services Limited, company registration number 03067703, whose registered office is at NHBCSL House, Davy Avenue. Knowlhill, Milton Keynes, Buckinghamshire MK5 8FP.
NHBCSL Company	Means any company, including NHBCSL, which is a subsidiary (within the meaning of section 1159 of the Companies Act 2006) of National House-Building Council (company registration number 00320784).
Parties	means NHBCSL and the Client and 'Party' shall be construed accordingly.
PRS	Predicted Rating Summary.
Regulations	The Building Regulations 2000 (2000 No. 2531 or as amended) and where applicable the Code for Sustainable Homes or BREEAM standards.
Services	The services described in a quotation, or web application form and any Additional Services.
Scheme Provider	An approved provider of sustainability certification, such as BRE, issuing certificates for accredited assessors.
Sustainability Assessment	Code for Sustainable Homes assessment, Echoes assessment, BREEAM assessment or consultancy advice related to such an assessment.
Sustainability Rating	The rating applicable to the assessment method being considered (e.g. Echoes rating, Code level).

Schedule 2

Stage Reached	Percentage of total assessment fee retained by NHBCSL	Scheme provider fees
Notice of Cancellation received after written confirmation of order has been received by NHBCSL.	5%	N/A (unless fees already payable to the Scheme Provider - e.g. for Bespoke assessment criteria)
Notice of Cancellation received after full/or part information has been submitted to NHBCSL as part of the Sustainability Assessment.	50%	
Notice of Cancellation received after a written response has been provided by NHBCSL (e.g. PRS) based on information provided by the Client.	50-70%	
Notice of Cancellation received after Report issued for the Sustainability Assessment; or after any work has been undertaken subsequent to the initial written response by NHBCSL.	100%	Not Refundable if Report has been submitted for QA/certification, or if fees are otherwise payable to the Scheme Provider