

Window Energy Performance (WEP)

NSAI Agrément Terms and Conditions

NSAI Agrément Terms and Conditions for the Window Energy Performance Rating Assessment

1. Definitions

- 1.1 **“Window Energy Performance Rating Assessment”** means an assessment by NSAI Agrément of the fitness of the Subject Matter of the Application for the Stated Purpose;
- 1.2 **“Window Energy Performance Rating Certificate”** means a certificate confirming the fitness for the Stated Purpose in Ireland of the Subject Matter;
- 1.3 **“ Window Energy Performance Certification”** means the grant by NSAI Agrément of a Window Energy Performance Rating Certificate following a successful Window Energy Performance Rating Assessment;
- 1.4 **“ Window Energy Performance Certification Mark”** means the mark comprising the IAB Logo together with the number of a Window Energy Performance Rating Certificate and a description of the Subject Matter in respect of which the Window Energy Performance Rating Certificate is granted ;
- 1.5 **“ Window Energy Performance Rating Trade Marks”** means the NSAI Agrément logo and any mark including or incorporating same;
- 1.6 **“Appeal”** means a request by the Organisation for reconsideration of any NSAI Agrément decision relating to the grant, refusal, amendment, suspension or revocation of an Window Energy Performance Rating Certificate;
- 1.7 **“Appeals Committee”** means the committee established by NSAI Agrément to hear and determine Appeals against decisions of NSAI;
- 1.8 **“Application for Confirmation”** means an application for Window Energy Performance Rating Assessment where the Subject Matter is already the subject of a foreign Window Energy Performance Rating certificate and where the Organisation arranges for the technical dossier of the relevant foreign Certification body to be made available to NSAI Agrément for the purposes of the Window Energy Performance Assessment under Irish conditions;
- 1.9 **“Application for Review”** means an Application for review of an Window Energy Performance Rating Certificate to assess the ongoing eligibility for Window Energy Performance Rating Certification of the Subject Matter of the said certificate;
- 1.10 **“Assessment Fee”** means the fee charged by NSAI Agrément to carry out the Window Energy Performance Rating Assessment applied for in the Application;
- 1.11 **“Certification Criteria”** means the criteria specified by NSAI Agrément to be complied with by the Organisation in order for the use of the Subject Matter for the Stated Purpose to qualify or continue to qualify for the Window Energy Performance Rating Assessment Certificate sought or held including, without limitation, the simulation spread sheet, any relevant building regulations or any other regulations, codes of practice or guidelines, as such may be amended, substituted or replaced from time to time;
- 1.12 **“Contract”** means the entire agreement in relation to the Window Energy Performance Rating Assessment applied for by the Organisation constituted by the Application, the Certification Criteria and these Terms and Conditions;
- 1.13 **“Expenses”** means expenses incurred by NSAI Agrément in the course of carrying out its powers and obligations under this Contract;
- 1.14 **“Expiry Date”** means, in respect of each Window Energy Performance Rating Certificate, the date specified by NSAI in writing as the date on which the Window Energy Performance Rating Certificate in question will expire;
- 1.15 **“Fees”** means the fees payable in respect of the carrying out by NSAI Agrément of its powers and obligations under this Contract;

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- 1.16 **"IAB"** means the Irish Agrément Board, a consultative body established by NSAI to assist NSAI in its Agrément function;
- 1.17 **" NSAI Agrément Logo"** means the stylised symbol used as a logo for the Agrément service by NSAI;
- 1.18 **"New Application"** means an application for Window Energy Performance Rating Assessment made in respect of Subject Matter that has not previously been the subject of a Window Energy Performance Rating Assessment Certificate in Ireland by NSAI Agrément and which does not rely on the technical dossier of a foreign Window Energy Performance Rating Certification Body in respect of the same Subject Matter;
- 1.19 **"NSAI"** means the National Standards Authority of Ireland;
- 1.20 **"Organisation"** means the applicant for a Window Energy Performance Rating Assessment and/or holder of an Window Energy Performance Rating Certificate (as appropriate) identified in the Application to which these Terms and Conditions are attached;
- 1.21 **"Review"** means the review carried out pursuant to an Application for Review;
- 1.22 **"Stated Purpose"** means the purpose in respect of which the Organisation requests certification of the fitness of the Subject Matter and which is specified in the Application to which these Terms and Conditions are attached;
- 1.23 **"Subject Matter"** means the specific product, material, system or technique which is the subject of the Application and/or any resulting Window Energy Performance Rating Certificate as the case may be and which is specified in the Application to which these Terms and Conditions are attached;
- 1.24 **"Simulation"** means the Technical Assessment Simulation prepared and drawn up by a Certified Simulator in respect of the Subject Matter which sets out the technical specification of the Subject Matter in order to qualify for a Window Energy Performance Rating Certificate in respect of the Stated Purpose and which is specified in the Application to which these Terms and Conditions are attached;
- 1.25 **"The Application"** means the application for Window Energy Performance Rating Assessment outlined in the Application attached to these Terms and Conditions;
- 1.26 **"Terms and Conditions"** means these terms and conditions; and
- 1.27 In these Terms and Conditions where the context so admits:
- (a) The singular includes the plural and vice versa
 - (b) Words referring to persons shall include firms, companies, corporations and vice versa.
 - (c) Reference to any statute or statutory provision shall include any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any instruments orders plans regulations permissions and directions or other subordinate legislation for the time being made issued or given under the relevant statute or statutory provision.
 - (d) Headings to clauses appearing in these Terms and Conditions are included for ease of reference only and shall not have any effect on the construction or the interpretation of these Terms and Conditions.
 - (e) Unless the context otherwise indicates, reference to clauses, sub-clauses, recitals or schedules, are to clauses and sub-clauses of, and recitals and schedules to, these Terms and Conditions.

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2. NSAI's obligations and powers

- 2.1 On the making of the Application by the Organisation and in consideration of and subject to payment of the Fees in accordance with clause **[4]** of these Terms and Conditions and to compliance by the Organisation with these Terms and Conditions, NSAI will:
- (a) carry out an Window Energy Performance Rating Assessment of the Subject Matter for the Stated Purpose against the Certification Criteria;
 - (b) grant an Window Energy Performance Rating Certificate to the Organisation if, in its sole discretion, NSAI deems it appropriate to do so having conducted the Window Energy Performance Rating Assessment provided for in **[paragraph (a) of sub-clause 2.1]** hereof;
- 2.2 In the event that an Window Energy Performance Rating Certificate is granted, NSAI may conduct such surveillance of the ongoing compliance of the Subject Matter with the Certification Criteria as NSAI shall consider to be appropriate.
- 2.3 Where the Organisation makes an Application for Review, NSAI may review the ongoing sufficiency of the Certification Criteria to measure the fitness for the Stated Purpose of the Subject Matter as well as the compliance of the Subject Matter with the existing or amended Certification Criteria.
- 2.4 NSAI shall do its best to give an accurate indication of the expected time required for carrying out the Window Energy Performance Rating Assessment but reserves the right to amend such time schedule in its sole discretion and accepts no liability for any loss, cost, or expense arising to the Organisation or any other person from any non-compliance with any such time schedule.
- 2.5 NSAI reserves the right to discontinue a Window Energy Performance Rating Assessment if it considers in its sole discretion that continuing such assessment would be dangerous or inappropriate, or if the Organisation unduly delays in providing the facilities, materials or information required for the assessment, or if a deficiency in the Subject Matter that makes it unlikely that an Window Energy Performance Rating Certificate could be granted for the Subject Matter in respect of the Stated Purpose becomes apparent, or for any other good reason. In such event NSAI shall refund to the Organisation an amount equal to the Assessment Fee less the value of work done and expenses incurred by NSAI up to the date of discontinuance.
- 2.6 NSAI may amend the Certification Criteria initially prescribed by it at any time during the Window Energy Performance Rating Assessment on the basis that the requirements of applicable building regulations or guidelines or schemes or relevant sectoral or industry practices have altered or that there has been a change in the state of the art relating to the relevant technology or that NSAI for any other reason, in its absolute discretion, considers a change in the Certification Criteria to be necessary or desirable. In the event that the Organisation is unable to demonstrate the compliance of the Subject Matter within the time prescribed by NSAI, NSAI may discontinue the Window Energy Performance Rating Assessment. NSAI may charge for any additional work involved in specifying the required change and/or assessing the Subject Matter against the new Certification Criteria.
- 2.7 Where NSAI is of the opinion that the Certification Criteria and/or the Subject Matter applicable to a particular Window Energy Performance Certificate have changed during the currency of the said certificate, it shall inform the Organisation of this opinion and invite the Organisation to make an Application for Review of the Window Energy Performance Rating Certificate in question. In the event that the Organisation does not make an Application for Review of the Window Energy Performance Rating Certificate (and without prejudice to NSAI's powers under clause **[17]** of these Terms and Conditions, NSAI may revoke the Window Energy Performance Rating Certificate in question.
- 2.8 NSAI may alter an Window Energy Performance Rating Certificate where NSAI, in its absolute discretion, considers such change necessary to reflect a change in the relevant Certification Criteria or to reflect more accurately the relevant Subject Matter or its

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features, manufacture or installation, or the Stated Purpose, or any changes to the Subject Matter or any said aspect of it or the Stated Purpose.

- 2.9 NSAI may, in its absolute discretion, but subject to the requirement to give reasonable notice to the Organisation, make such changes to the provisions of this Contract as it deems appropriate and the Organisation shall be bound by the Contract as amended.
- 2.10 NSAI shall take all reasonable care to ensure that, in performing its obligations under this Contract, it does not disrupt the operations of or, save as may be reasonably unavoidable, inconvenience the Organisation.

3. Term of Agrément Certificate

- 3.1 If not earlier terminated through voluntary or involuntary revocation or as a result of the grant of a new Window Energy Performance Rating Certificate in respect of the Subject Matter pursuant to an Application for Review, an Window Energy Performance Rating Certificate will expire on the Expiry Date.

4. The Organisation's obligations

- 4.1 The Organisation shall comply with all of its obligations and responsibilities under this Contract.
- 4.2 The Organisation shall pay the Fees in accordance with the provision of Clause **[5]** of these Terms and Conditions.
- 4.3 The Organisation acknowledges that irrespective of the type of application made i.e. whether the Application is a new Application, an Application for Review, the Organisation bears the entire responsibility to give to NSAI all the information, materials and facilities that NSAI requests to carry out its functions under this Contract and accordingly that the Organisation shall itself promptly provide, or arrange to have promptly provided by third parties upon the reasonable request of NSAI the following:
- 4.3.1 all such information, assistance and co-operation as NSAI considers necessary to enable NSAI to carry out its functions under this Contract.
- 4.3.2 any and all existing materials, products, items, details of quality control arrangements and site installation procedures, performance data, tests, studies, evaluations or reports required by NSAI; and,
- 4.3.3 any additional test reports, studies or evaluations required by NSAI to be carried out.
- 4.4 In particular, but without limitation, the Organisation shall at its own expense promptly do or arrange to have done the following upon NSAI's request:
- 4.4.1 prepare, package and dispatch items needed by NSAI for its assessment or for verification purposes including the Subject Matter;
- 4.4.1 collect any item delivered or dispatched to NSAI within **[15]** days of being requested by NSAI to do so;
- 4.4.1 everything necessary to enable NSAI to assess whether the Window Energy Performance Rating Certificate should be granted or, if already granted, maintained, amended, suspended or revoked; and
- 4.5 The Organisation shall ensure that the record-keeping obligations imposed by Clause **[6]** of these Terms and Conditions are complied with.
- 4.6 The Organisation shall grant or ensure that there are granted to NSAI all such rights of access to any premises and area necessary for the purpose of allowing NSAI to inspect the Subject Matter and/or its manufacture and/or installation and assess whether an Window Energy Performance Rating Certificate should be granted or, if already granted,

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maintained, amended, suspended or revoked and for any other purpose NSAI may consider necessary, in carrying out its functions under this Contract.

- 4.7 The Organisation shall grant or ensure that there are granted to NSAI all such access to the Organisation's own computer systems, facilities, records, and information, or those of any relevant third party such as manufacturers and installers of the Subject Matter, as NSAI may require for the purposes of carrying out its functions under this Contract.
- 4.8 The Organisation shall inform NSAI of any change affecting any information given in the Application and/or, if the Window Energy Performance Rating Certificate has already been granted, of any matter affecting the compliance of the Subject Matter or its manufacture or installation or any other aspect of the Subject Matter with the Certification Criteria or this Contract, immediately after the occurrence of the said change or matter or, if this is not possible, at the latest within **[5]** working days of the said change or matter.
- 4.9 The Organisation shall notify NSAI in writing of any change of ownership or control of the business that produces or manufactures the Subject Matter, or of any other event by which the control of that business will be transferred or changed if such change, sale or event could affect the Window Energy Performance Rating Certification of the Subject Matter in a material manner: such notice to be given in advance of the said change, sale or event taking place and the Organisation shall confirm to NSAI in writing the occurrence of any such change, sale or event immediately upon its taking effect, or if this is not possible, at the latest within **[5]** working days of the said change, sale or event.
- 4.10 The Organisation must take the steps directed in clause **[17.5]** of these Terms and Conditions if it becomes aware of any failure of the Subject Matter to comply with the Certification Criteria.
- 4.11 The Organisation must comply with the provisions of clause **[7]** of these Terms and Conditions in relation to claims of Agrément Certification and use of the Agrément Certificate and the NSAI Window Energy Performance Rating Certification Mark.

5. Fees and charges

- 5.1 The Organisation shall pay the Assessment Fee in advance of the commencement of Window Energy Performance Rating Assessment by NSAI and all other Fees and Expenses within 30 days of receipt of each properly submitted and properly due invoice.
- 5.2 Contract fees quoted are exclusive of travel and accommodation expenses and fees for the development of the certificate. During the course of the assessment it shall be necessary to travel to the place of manufacture of the product. All travel to destinations outside the continent of Europe shall be "Business Class". All accommodation shall be of a reasonable standard. The organisation shall be invoiced separately for all travel and accommodation fees prior to the issue of the certificate.
- 5.3 The Organisation shall make its payment of Fees to NSAI.
- 5.4 The Fees are detailed in NSAI's schedule of fees and are subject to review from time to time. The Organisation's obligation shall be to pay the Fees at the rate that is effective at the date the relevant Fee is incurred. A schedule of NSAI's fees is available on the Agrément section of the NSAI website at www.n sai .ie and a hard copy may be requested from NSAI.
- 5.5 NSAI reserves the right to levy additional fees in respect of additional work necessitated by any failure of the Organisation to comply with its obligations under this Contract or in respect of work that NSAI considers to be in excess of the level usually required for the type of matter involved.
- 5.6 Without prejudice to any other powers or remedies available to NSAI under these Terms and Conditions, NSAI reserves the right to discontinue the Window Energy Performance Rating Assessment or, where a Window Energy Performance Rating Certificate has been granted, discontinue surveillance, review or other maintenance services and/or suspend, or withdraw the Agrément Certificate where Fees that are owed by the Organisation remain unpaid beyond the date for payment of the said Fees.

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- 5.7 In the event that the Organisation notifies NSAI that it wishes to discontinue an Window Energy Performance Rating Assessment prior to completion of the said assessment, NSAI shall refund to the Organisation an amount equal to the Assessment Fee less an amount attributable to work already done and Expenses incurred by NSAI up to the date NSAI receives notification of discontinuance.
6. **Record Keeping**
- 6.1 Without prejudice to the general legal obligations of the Organisation in relation to the maintenance of its records, records of all information required to be kept by NSAI under the Certification Criteria or otherwise should be kept so that such information is readily accessible by NSAI from the Organisation (irrespective of whether the Organisation is or is not the originator of the information) for a minimum period of five years.
- 6.2 Such records as are required to be held by the Organisation under this clause **[6]** shall be in a form which allows speedy and accurate checks to be made by NSAI.
- 6.3 NSAI or its duly authorised representative shall have the right at any reasonable time during business hours to enter onto the Organisation's premises and to assess any matter affecting the Application or an Window Energy Performance Rating Certificate held by the Organisation and to inspect and audit the records of the Organisation and any other book, record or invoice relating to the Subject Matter of the Application or Window Energy Performance Rating Certification and NSAI or its duly authorised representative shall be entitled to take copies or extracts from any such records and shall have the right to interview any officer, employee, servant or agent of the Organisation and shall be entitled to the full assistance and co-operation of the Organisation and its officers, employees, servants or agents.
7. **Claims of Window Energy Performance Rating Certification and use of NSAI Window Energy Performance Rating Certification Mark and the Window Energy Performance Rating Certificate**
- 7.1 The Organisation acknowledges NSAI's full ownership of the Window Energy Performance Rating Trade Marks.
- 7.2 Upon grant of an Window Energy Performance Rating Certificate by NSAI and subject to the other provisions of this clause **[7]**, the Organisation may use the Window Energy Performance Rating Certification Mark on or in relation to the Subject Matter of the Window Certificate to which it relates. The Organisation may not under any circumstances use the Window Energy Performance Rating Certification Mark or make reference to Window Energy Performance Rating Certification in respect of the Subject Matter in advance of the relevant Window Energy Performance Rating Certificate being issued by NSAI. The Organisation may not under any circumstance use the NSAI Agrément Logo otherwise than as part of the permitted use of the NSAI Agrément Window Energy Performance Rating Certification Mark.
- 7.3 The Organisation shall familiarise itself with and comply strictly with the NSAI regulations as to use of the Window Energy Performance Rating Certification Mark that are applicable at any given time and shall make such modification to the said use as may be required from time to time by changes in the said NSAI regulations. NSAI shall notify the Organisation of any changes in this respect and accord reasonable time to the Organisation to adapt its use in accordance with any such change. The regulations as to use of the Window Energy Performance Rating Certification Mark are available on the Agrément section of the NSAI website at www.nsai.ie and a hard copy may be requested from NSAI.
- 7.4 In referring to any Window Energy Performance Rating Certificate that it holds, the Organisation shall be specific and accurate as to the Subject Matter and Stated Purpose certified and the identity of the body that has granted the Window Energy Performance Rating Certificate.
- 7.5 The Organisation shall not, whether directly or indirectly, make any representation or do any thing, whether by act, omission, statement or implication that might lead any person to believe that an Window Energy Performance Rating Certificate has been granted by

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NSAI in respect of any product, material, system or technique where no such certificate has been granted by NSAI in respect of the particular product, material, system or technique.

- 7.6 The Organisation shall ensure that no party is misled, as to the existence or scope of an Window Energy Performance Rating Certificate granted by NSAI either as a result of the Organisation's use of the Window Energy Performance Rating Certificate, positioning of or any other use of the Window Energy Performance Rating Certification Mark or as a result of any other act, omission, statement or implication of the Organisation and in particular the Organisation shall ensure that the attention of customers of the Organisation is drawn to the scope and limitations of an Window Energy Performance Rating Certificate as these are set out in the Window Energy Performance Rating Certificate.
- 7.7 The Organisation shall not use the fact of Window Energy Performance Rating Certification or the existence of an Application for an Window Energy Performance Rating Certificate in any way that could reasonably be considered to be misleading or to bring the Window Energy Performance Rating scheme into disrepute.
- 7.8 In the event that the Window Energy Performance Rating Certificate held by the Organisation is suspended, the Organisation shall, where possible remove the Window Energy Performance Rating Certification Mark from the Subject Matter and from business and advertising literature in respect of the said Subject Matter and cease to advertise the fact of certification by ceasing to use the Window Energy Performance Rating Certificate in business or advertising. NSAI shall have the right to require more specific steps to be taken in respect of the Organisation's use of the Agrément Certificate, the Window Energy Performance Rating Certification Mark and/or references to Window Energy Performance Rating Certification where NSAI considers such steps to be necessary to minimise any confusion as to the status of the certification.
- 7.9 Upon revocation of the Organisation's Window Energy Performance Rating Certificate, the Organisation shall deliver up to NSAI all copies of the Window Energy Performance Rating Certificate in question and immediately discontinue all use of the Window Energy Performance Rating Certification Mark and/or all references to Window Energy Performance Rating Certification by NSAI on or in relation to the Subject Matter covered by the said certificate including on all documentation, brochures, advertising and publicity material relating to the said Subject Matter where the Window Energy Performance Rating Certification mark has been embossed or engraved on the Subject Matter, same shall be removed or obscured permanently from the Subject Matter before the said Subject Matter is supplied to customers. The Organisation shall also ensure that all of the Organisation's customers immediately discontinue reference to Window Energy Performance Rating Certification by NSAI in respect of the Subject Matter in all documentation, brochures, advertising and publicity material that such customers may generate.
- 7.10 NSAI reserves the right to take the measures set out below where an Organisation uses an Window Energy Performance Rating Certificate or the Window Energy Performance Rating Certification Mark or refers to Window Energy Performance Rating Certification in a manner that NSAI considers, in its absolute discretion, to be misleading. Corrective actions shall include but not be limited to NSAI:
- (a) suspending the Window Energy Performance Rating Certificate;
 - (b) revoking the Window Energy Performance Rating Certificate;
 - (c) requiring the Organisation to notify all parties (including customers of the Organisation) affected;
 - (d) NSAI itself notifying all parties (including customers of the Organisation) affected; and
 - (e) instituting legal proceedings
8. **Directory of Organisations holding an Window Energy Performance Rating Certificate**

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- 8.1 NSAI may, but for the avoidance of doubt shall not be under any obligation to, publish and maintain a directory or directories of organisations who hold Window Energy Performance Rating certificates and/or a directory or directories of Window Energy Performance Rating certificates issued (whether current, suspended, or revoked) to be made available to the public on-line or otherwise. To the extent that NSAI chooses to make such a directory or directories available (each to be known as the “**directory**”), the following provisions in this clause **[8]** apply.
 - 8.2 NSAI shall, in its absolute discretion, determine what information in relation to the Organisation, the Subject Matter, Stated Purpose, Window Energy Performance Rating Certification and the status of the Window Energy Performance Rating Certificate should be included in the directory from time to time and may, from time to time review the matter and require further information for the purposes of inclusion in the directory.
 - 8.3 The Organisation shall be obliged to provide any information that NSAI requests in relation to itself, or the manufacturer or producer of the Subject Matter (if different) or any other information NSAI deems relevant for inclusion in the directory.
 - 8.4 The Organisation shall ensure that the information which it gives to NSAI generally and in response to specific requests for information for the purposes of the directory is accurate and not misleading. The Organisation further undertakes to immediately inform NSAI of any inaccuracy which appears in the directory and of any change which occurs which necessitates an amendment of the directory listing for the Organisation or for the Window Energy Performance Rating Certificate within **[5]** working days of the said inaccuracy coming to the Organisation’s attention or of the change occurring whichever is relevant.
 - 8.5 In the event of a revocation of an Window Energy Performance Rating Certificate, either voluntarily or involuntarily, the relevant listing in respect of the Organisation and/or the Window Energy Performance Rating Certificate may be removed or amended (as may be applicable) from the directory.
 - 8.6 All details of the Subject Matter and the status and circumstances of the Window Energy Performance Rating Certificate (including but not limited to revocation of the Window Energy Performance Rating Certificate) will be kept by NSAI in whatever form NSAI in its sole discretion deems appropriate and as a matter of public record and shall be made available by NSAI to any person on request.
 - 8.7 NSAI shall have sole control over the format, composition and distribution of the contents of the directory and the positioning of any entry relating to the Organisation or any other organisation within the directory.
 - 8.8 NSAI shall not be liable for any Internet or telecommunications failure, computer virus, third party interference or effect of any third party software or hardware that may interrupt or delay access to any electronic directory or cause any other problems or losses.
 - 8.9 NSAI shall not be liable to the Organisation for any loss or damage including injury to reputation suffered by the Organisation as a result of the appearance or non-appearance of any matter for any reason whatsoever in the directory or as a result of the use by the public or any person of the directory or of any information kept by NSAI.
 - 8.10 NSAI may at any time review the directory and may remove any listing or part of any listing for the Organisation or any organisation if it considers, in its absolute discretion, that it is appropriate to do so.
 - 8.11 NSAI may, in its sole discretion and without any liability to the Organisation, decide against providing or cease to provide the directory.
 - 8.12 NSAI gives no representations or warranties express or implied in relation to the accuracy, reliability, up-to-date nature or completeness of the directory and excludes liability for any damage or loss suffered by the Organisation as a result of any inaccuracies, errors or omissions in the directory.
9. **Warranty, Representation and Indemnity by the Organisation as to information given to NSAI**

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- 9.1 The Organisation warrants and represents that the information it provides to NSAI for the purposes of any directory kept by NSAI or otherwise will not infringe any intellectual property, publicity, privacy or other right of any third party or any other law or regulation including data protection legislation.
- 9.2 The Organisation shall indemnify, defend and hold harmless NSAI, its officers, employees and agents from any and all third party claims, liability, damages and/or costs (including but not limited to legal fees) arising from a breach of the warranty and representation at Clause [9.1] above.
10. **Appeal of NSAI decisions**
- 10.1 In the event that the Organisation is dissatisfied with a decision of NSAI not to grant an Window Energy Performance Rating Certificate to the Organisation or to suspend or revoke an Window Energy Performance Rating Certificate held by the Organisation or not to renew or reinstate an Window Energy Performance Rating Certificate held by the Organisation, the Organisation may appeal the matter to the Appeals Committee
- 10.2 Any Appeal taken pursuant to clause [10.1] above, will be conducted in accordance with the relevant NSAI procedures that are current on the date when the Appeal is made.
- 10.3 The decision of the Appeals Committee shall be final and binding on the parties.
11. **Confidentiality**
- 11.1 With the exception of information made or to be made available to the public in an Window Energy Performance Rating Certificate information relating to the Subject Matter or any other of the Organisation's products, materials, systems, techniques or the Organisation's processes, plans or intentions, know how, trade secrets and business affairs gained by NSAI in the course of performing its functions under this Contract will be treated by NSAI as confidential and subject to clause [11.2] of these Terms and Conditions, such information will not be disclosed by NSAI to third parties without the consent of the Organisation.
- 11.2 NSAI may disclose the information referred in clause [11.1] above to the extent that:
- 11.2.1 such disclosure is required by the law of any relevant jurisdiction or for the purpose of any judicial proceeding;
- 11.2.2 the information has come into the public domain through no fault of NSAI;
- 11.2.3 the circumstances are such that the Organisation may reasonably be understood to have given permission for the disclosure;
- 11.2.4 such disclosure (including, but not limited to disclosure to its employees, servants, agents or sub-contractors or to IAB or other consultative committees, government departments or other Agrément bodies or associations) is necessary for the purposes of NSAI's functions under this Contract or for NSAI's internal procedures or obligations to NSAI, government departments or other Agrément bodies or associations.
12. **Website**
- 12.1 NSAI gives no guarantee that the website www.nsai.ie will be fault free or that the information contained on the said website will be correct and NSAI does not accept any liability for any damage or loss suffered by the Organisation arising as a result of the said website or the information contained therein (including any errors, inaccuracies or omissions in such information or any faults, interruptions or delays in connection with the website).
13. **Limitation of liability**

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- 13.1 This clause sets out NSAI's entire liability (including any liability for the acts and/or omissions of its employees, agents or sub-contractors) to the Organisation in respect of any and all breaches of its contractual obligations and any and all tortious acts or omissions including, but not limited to, negligence.
- 13.2 NSAI's entire liability will not, in aggregate, exceed the amount paid in fees pursuant to this Contract by the Organisation to NSAI in respect of NSAI's fees in the twelve-month period preceding the act, omission or breach complained of.
- 13.3 NSAI shall under no circumstances be liable to the Organisation for any special, consequential or indirect loss. In this clause "*special consequential or indirect loss*" shall include, without limitation, loss of profit, loss of business, loss of goodwill and loss of savings.
- 13.4 Nothing in clauses **[13.1, 13.2 and 13.3]** above shall confer any right or remedy upon the Organisation to which it would not otherwise be entitled.
14. **Nature of Window Energy Performance Rating Certification**
- 14.1 Without prejudice to any other provision of this Contract, the Organisation acknowledges the scope and limitations of Window Energy Performance Rating Certification as these are set out in the Window Energy Performance Rating Certificate and in particular that Window Energy Performance Rating Certification has no bearing on and does not relieve the Organisation of its obligation to:
- (a) inform itself of and ensure the Organisation complies with all appropriate health and safety and product safety laws and any common law or other duty of care in relation to sale, supply, maintenance or installation of the Subject Matter in individual contracts of supply of the Subject Matter to the Organisation's customers;
- (b) ensure that the Organisation has the legal right (under regulation, third party Intellectual Property or other rights) to manufacture, import, distribute or install (as appropriate) the Subject Matter.
15. **Indemnity**
- 15.1 The Organisation shall indemnify NSAI against any and all claims, damages, costs, charges and expenses (including legal expenses) made against or incurred by NSAI arising from or incurred by reason of any failure of the Subject Matter to be fit for the Stated Purpose due to any lapse in compliance with the Certification Criteria of which the Organisation did not inform NSAI in writing, contrary to its obligations under Clauses **[4.8 and 17.5]** hereof, or by reason of any infringement or alleged infringement of any third person's rights by the Organisation or otherwise in the course of manufacturing, making, providing, installing, maintaining, using, distributing or importing the Subject Matter or by reason of any claims or representations as to certification made by the Organisation where NSAI has not yet issued an Window Energy Performance Rating Certificate or by reason of any unjustified claims made by the Organisation as to the existence or scope of Window Energy Performance Rating Certification.
16. **Insurance**
- 16.1 The Organisation shall have in place all necessary insurance policies to cover its obligations under clauses **[9]** and **[15]** of these Terms and Conditions and shall comply with all the terms and conditions of such policies.
- 16.2 The Organisation shall supply to NSAI all material information required by NSAI at any time in respect of the insurances specified in Clause **[16.1]**.
17. **Suspension and revocation**
- 17.1 Without prejudice to NSAI's powers under clauses **[3.3, 3.4, 5.5, 7.10]** of these Terms and Conditions, NSAI may immediately impose suspension of any Organisation's Window Energy Performance Rating Certificate in the event:

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- (a) of any change in the Certification Criteria which the Organisation is not in a position to comply with fully, or at all, by the date designated by NSAI; or
 - (b) that the Organisation breaches any Certification Criterion or this Contract; or
 - (c) that NSAI considers that Window Energy Performance Rating certification in general is likely to be brought into disrepute by the Organisation.
- 17.2 Without prejudice to NSAI's powers under clauses [3.3, 3.4, 5.5, 7.10] of these Terms and Conditions, NSAI may revoke the Organisation's Window Energy Performance Rating Certificate immediately on written notice (such termination to be effective as and from the date of that notice) in the event of any of the following:
- (a) the Window Energy Performance Rating Certificate has been suspended under clause **[17.1]** and the Organisation has not addressed to the satisfaction of NSAI the cause of the said suspension within the period of suspension allocated by NSAI.
 - (b) the Organisation, being an individual is declared bankrupt or enters into a composition with his creditors; or
 - (c) the Organisation being a company has a receiver, examiner or administrator appointed over the whole or any part of its assets or the Organisation is struck off the register of companies in the jurisdiction where it was incorporated or an order is made or a resolution passed for winding up of the Organisation (unless such order or resolution is part of a voluntary scheme for the reconstruction or amalgamation of the Organisation as a solvent corporation and the resulting corporation, if a different legal entity, undertakes to be bound by the Certification Criteria and this Contract); or
 - (d) the Organisation breaches any Certification Criterion or this Contract in a manner that NSAI considers in its absolute discretion to warrant immediate revocation; or
 - (e) the Organisation has engaged in any fraudulent or dishonest conduct or fails in any respect to comply with the laws of Ireland; or
 - (f) the Organisation has in the opinion of NSAI brought Window Energy Performance Rating certification into disrepute in a manner that NSAI considers in its absolute discretion to warrant immediate revocation of the Organisation's Window Energy Performance Rating Certificate; or
 - (g) the Organisation has not demonstrated compliance with the Certification Criteria by the end of any period of suspension imposed or voluntarily accepted by the Organisation.
- 17.3 Where an Application for Review is made prior to the Expiry Date of an Window Energy Performance Rating Certificate the Window Energy Performance Rating Certificate shall stand revoked on completion of the Review irrespective of whether the Review has resulted in the grant of a new Window Energy Performance Rating Certificate.
- 17.4 Without prejudice to clause **[17.5]** the Organisation may choose to seek suspension or revocation of the Window Energy Performance Rating Certificate at any time.
- 17.5 In the event that during the currency of the Window Energy Performance Rating Certificate, the Organisation is unable for any reason to comply with the Certification Criteria and/or the Contract, the Organisation shall immediately apply to NSAI for suspension or revocation of the Window Energy Performance Rating Certificate PROVIDED THAT in the event of there being no objectively justifiable cause to consider the inability to comply as being temporary the Organisation shall apply for revocation of the Window Energy Performance Rating Certificate.
- 17.6 For the avoidance of doubt, the duty to apply for suspension or revocation as outlined in clause **[17.5]** above applies even where the cause for the inability to comply is not due to any fault of the Organisation itself.

18. Consequences of Suspension

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- 18.1 The Organisation shall, upon suspension of the Window Energy Performance Rating Certificate, comply with the provisions of clause **[7]** of these Terms and Conditions.
19. **Consequences of revocation**
- 19.1 The Organisation must promptly deliver up all copies of the relevant Window Energy Performance Rating Certificate to NSAI following revocation of the Window Energy Performance Rating Certificate.
- 19.2 The Organisation must for a minimum of six months notify its customers to whom it has previously provided the product, material, system or technique comprising the Subject Matter of the revoked Window Energy Performance Rating Certificate prior to providing any such further product, material, system or technique to such customer and any new customers who expect or might reasonably expect such product, material, system or technique to be the subject of a valid Window Energy Performance Rating Certificate and require its customers to amend any representations made by the said customers in relation to the Window Energy Performance Rating Certificate or Window Energy Performance Rating Certification accordingly.
- 19.3 The Organisation shall, upon revocation, comply with the provisions of clause **[7]** of these Terms and Conditions.
20. **Complaints**
- 20.1 If the Organisation has a complaint in respect of any matter relating to NSAI's performance of its functions under this Contract, other than a decision by NSAI not to grant the Window Energy Performance Rating Certificate to the Organisation or to amend, suspend or revoke the Window Energy Performance Rating Certificate or not to renew or re-instate the Window Energy Performance Rating Certificate, for which the Appeal process in clause **[10]** of these Terms and Conditions is designed, the Organisation may address a complaint to NSAI which will deal with the said complaint in accordance with its then current procedures in relation to complaints.
21. **Notices**
- 21.1 Any notice served under this Contract shall be sufficiently served if sent by recorded post or fax to the last known place of business of the addressee. Proof of recorded dispatch in the case of recorded post and receipt of a successful transmission report in the case of a facsimile transmission shall be conclusive evidence of receipt of the notice by the addressee.
22. **Governing Law**
- 22.1 This Contract shall be governed by and construed in accordance with the laws of Ireland and the parties hereto submit to the jurisdiction of the Irish courts for the resolution of disputes hereunder.
23. **Unenforceability**
- 23.1 In the event of any clause of this Contract or any part thereof being rendered void or unenforceable by any rule of law or any decision of an administrative body or court of competent jurisdiction, or in the event of any such clause or part of a clause being rendered or deemed to be a breach of any obligation owed by NSAI to any statutory body, government department or international accreditation body, the clause or relevant part thereof shall be void or unenforceable to the extent only that it breaches the relevant law, decision, rule or regulation and no further. In such circumstances the infringing clause or part thereof shall apply with such modification as would be necessary to make it valid and effective.
24. **Waiver**
- 24.1 No relaxation, forbearance, delay or indulgence by NSAI in enforcing any of the terms and conditions of this Contract the granting of time by NSAI to the Organisation shall



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prejudice, affect, or restrict the rights and powers of NSAI under this Contract nor shall any waiver by NSAI of any breach of this Contract operate as a waiver of or in relation to any subsequent or any continuing breach of this Contract.