FIRSTRATE5® HOUSE ENERGY RATING SOFTWARE LICENCE AGREEMENT

(Effective 21 July 2026)

Version July 2026

DISCLAIMER

The results you receive from the FirstRate5 software tools are estimates only. They can be used for the purpose of comparing buildings and indicate values and costs based by the input values that are entered into by you. The annual energy use, annual energy value, annual energy costs and annual greenhouse emissions achieved by a building will depend on how the building is used on a day-by-day basis and variations and results depend on the accuracy of your inputs. Department Energy, Environment and Climate Action (DEECA) provide these tools for your use, which is based on industry standards and modelling, and because it relies on third party data, assumptions, inputs and modelling, DEECA gives no warranty in respect of the results including their accuracy or completeness.

Any use of the results you receive and claims made by you, including statements for marketing or promotion purposes will be your responsibility and at your own liability to the full extent of the law.

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1. GRANT OF LICENCE

(a) DEECA grants to the Licensee a non-exclusive, non-sub-licensable and nontransferable licence to use for the term of this Licence Agreement the Software (in object code or executable form) and use the Services solely to:

(i) conduct Assessments of new and/or existing residential dwellings in Australia;

(ii) generate Project Files for each such Assessment; and

(iii) print a summary diagnostic report of each such Assessment,

for the Licensee's educational and/or business purposes and subject to all of the terms and conditions of this Licence Agreement (the **Permitted Purposes**).

(b) **Licensed device.** Except as permitted under clause 1(c), DEECA grants to the Licensee the right to install and run one instance of the FirstRate5 Software Application on the Licensee's device.

(c) **Multiple or pooled connections**. Use of hardware or software to multiplex or pool connections does not reduce the number of licences required. A Licensee is responsible for any multiple or pooled connections and shall ensure that each separate user of the Software authorised by it to use the Software via the multiple or pooled connection is provided with a copy of and agrees to the terms of this Licence Agreement prior to use. A separate licence shall be established between the user (the Licensee) and DEECA upon use of each instance of the Software.

2. ACCREDITATION

(a) DEECA warrants that the list of Software versions provided at < https://www.fr5.com.au/accredited-software-products> are accredited under the Nationwide House Energy Rating Scheme (**NatHERS**) Software Accreditation Protocol.

(b) DEECA may when notifying the Licensee of any additional version of the FirstRate5 Software under clause 2(a) provide additional terms and conditions that apply to the use of that revised version. The Licensee must comply with such additional terms and conditions in relation to the use of any such versions.

(c) The Licensee acknowledges and agrees that:

(i) versions of the FirstRate5 Software preceding the versions referred to in clause 2(a) may not create Project Files which are suitable for generating NatHERS Certificates and that it is the Licensee's sole responsibility to ensure that it is are using a version of the FirstRate5 Software that creates Project Files which are suitable for generating Assessments which can be used to create NatHERS Certificates;

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(ii) unless the Licensee has a written request from a regulator to use an older version:

i. Class 1 rating can only be started in the latest version of the FirstRate5 Software Application; and

ii. Class 2 rating, if it is the first in the development, can only be started in the latest rating of the software; and

(iii) the NCC does not permit the use of software in Regulation Mode to demonstrate compliance with the Verification using a Reference Building pathway.

3. NATHERS CERTIFICATES

(a) The Licensee acknowledges and agrees that to demonstrate compliance with the NCC, an Assessment must be undertaken in accordance with the applicable NatHERS Technical Note as published on the NatHERS website (https://www.nathers.gov.au/) and the Licensee must generate a NatHERS Certificate (or NatHERS Rating Report) in accordance with clause 5(a) to demonstrate compliance with the NCC Deemed-to-Satisfy NatHERS pathway or the New South Wales Building Sustainability Index (BASIX).

(b) The Licensee warrants that it will not represent to any person or purport that any information or material available from or prepared using the Software or the Services, including, without limitation:

(i) a print-out of the summary diagnostic report referred to in clause 1(a)(iii) above; or

(ii) any document or data prepared using such summary diagnostic report or associated diagnostic data,

constitutes a NatHERS Certificate for the purposes of demonstrating compliance with, or that a dwelling otherwise meets, satisfies or complies with the NCC residential energy efficiency provisions as determined in accordance with the NatHERS.

(c) The Licensee acknowledges and agrees:

(i) not to use the FirstRate5 Software in Regulation Mode for any NCC compliance pathway other than NatHERS;

(ii) that the NCC does not permit use of software accredited or previously accredited under NatHERS, or use of the additional functionality provided in any mode other than Regulation Mode, for the purposes of demonstrating compliance with the Verification Using a Reference Building (**VURB**) pathway for Class 1 or 10 buildings; and

(iii) that the Software is not suitable for Assessments under the Verification Using a Reference Building Pathway under the NCC for Class 1 to 10 Buildings; and

(iv) not to alter a NatHERS Certificate after it is generated.

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4. LICENSEE ACCOUNTS FOR THE FR5 WEBSITE

(a) The Licensee must register and maintain a Licensee Account in order to:

(i) upload Project Files;

(ii) generate NatHERS Certificates to demonstrate compliance with performance requirements of the NCC residential energy efficiency provisions as determined in accordance with the NatHERS;

(iii) access and download NatHERS Certificates that have been previously generated;

(iv) download the FirstRate5 Software Application; and

(v) access and use the Whole of Home Web App.

(b) The Licensee must:

(i) when registering on the FR5 Website to create a Licensee Account, provide DEECA with accurate, complete, and up-to-date information as requested on the registration page of the FR5 Website; and

(ii) promptly inform DEECA of any changes to such information.

(c) DEECA may, in its absolute discretion, refuse registration or close a Licensee Account if:

(i) the Licensee breaches this Licence Agreement and, if the breach is capable of remedy, fails to remedy that breach within 7 days of receiving written notice from DEECA requesting the Licensee to remedy the breach;

(ii) the Licensee opens or attempts to open a Licensee Account using incomplete or falsified details; or

(iii) DEECA considers that the refusal of registration or closure of a Licensee Account is necessary to comply with DEECA's obligations at law.

(d) The Licensee acknowledges and agrees that:

(i) passwords are confidential and the Licensee will take reasonable precautions to keep it confidential;

(ii) it must not disclose its password to any other person;

(iii) it must change its password regularly and take reasonable steps to ensure its password is not readily able to be discovered by a third party;

(iv) it must notify DEECA if the confidentiality of its password is compromised as soon as the Licensee becomes aware; and

(v) the Licensee is solely responsible for all activities that occur on its Licensee Account undertaken by the Licensee or by another person in circumstances where Licensee has failed to comply with any of the requirements referred to in paragraphs (i) to (iv).

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(e) The Licensee acknowledges and agrees that DEECA has responsibilities to the NatHERS Administrator and AAOs. DEECA may be directed by the NatHERS Administrator or an AAO to take certain steps or actions (including disabling the Licensee's Licensee Account and use of the Software and the Services) if:

(i) the Licensee breaches or is suspected to have breached this Licence Agreement; or

(ii) circumstances arise with respect to a Licensee and their use of the Software in a way that will or may cause detriment to the NatHERS Administrator, the NatHERS reputation, the integrity of the NatHERS Administrator.

(f) Where applicable, the Licensee must comply with those steps or actions as directed by DEECA and may direct inquiries as to these steps or actions to the NatHERS Administrator.

5. GENERATING NATHERS CERTIFICATES USING THE FR5 WEBSITE

(a) On completion of an Assessment, the Licensee may upload the relevant Project File generated by the Assessment to its Licensee Account and may request generation of one or more NatHERS Certificates through the FR5 Website.

(b) If the Assessment rating indicated by the FR5 Website is not consistent with the result from the relevant Software, the Licensee must address this discrepancy before generating the relevant NatHERS Certificate (for example, by validating or reuploading the applicable Project File).

(c) If the Licensee is satisfied with the Assessment indicated by the FR5 Website then the Licensee may generate one or more NatHERS Certificates (but the Licensee must have obtained Certificate Credits in order to do so, as more fully described in clause 6). Each NatHERS Certificate generated by the Licensee will be emailed to the email address set out in the Licensee Account and will also be available for the Licensee to download from the Licensee Account.

(d) Once a NatHERS Certificate has been generated by the FR5 Website, the Licensee will not be able to make modifications to the Project File Assessments used to generate that NatHERS Certificate. However, the Licensee may upload a Revised Project File in accordance with clause 5(f), or complete a new Assessment as required.

(e) All NatHERS Certificates are validated when they are generated. The Licensee may withdraw any NatHERS Certificate stored by the Licensee in the Licensee Account (**Invalidated NatHERS Certificate**). Licensee will not be able to revalidate any Invalidated NatHERS Certificate once withdrawn. The Licensee will need to contact DEECA if License wishes to revalidate an Invalid NatHERS Certificate (for example, because it was accidentally withdrawn). To avoid doubt, an Invalidated NatHERS Certificate does not entitle a Licensee to any refund or reinstatement of the Certificate Credits applied in respect of that NatHERS Certificate.

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(f) The Licensee acknowledges and agrees that it may upload a Revised Project File or complete a replacement Assessment and generate a replacement NatHERS Certificate without further Certificate Credits being deducted from Licensee Account only if:

(i) the Original NatHERS Certificate was generated on or after 12 July 2021 (9am) and not more than 12 months ago; and

(ii) the address of the dwelling in the Revised Project File exactly matches the address of the dwelling in the Original NatHERS Certificate.

6. CERTIFICATE CREDITS AND CERTIFICATE FEES

(a) In order to generate a NatHERS Certificate or NatHERS Rating Report, the Licensee must pre-pay for one or more Certificate Credits (by one of the payment methods permitted on the FR5 Website) (**Certificate Fee**). The amount the Licensee must pay for each Certificate Credit, as well as the number of Certificate Credits that the Licensee will need to apply in order to generate a NatHERS Certificate or NatHERS Rating Report, are specified on the FR5 Website. The applicable number of Certificate Credits will be applied against the Licensee's then current Certificate Credit balance when the Licensee generates a NatHERS Certificate or NatHERS Rating Report.

(b) DEECA may vary the amount the Licensee must pay to obtain Certificate Credits from time to time in its absolute discretion (subject to the procedure specified for varying this License Agreement set out in clause 20.

(c) The maximum number of Certificate Credits that the Licensee may hold in a Licensee Account at any one time is 1,000.

(d) Certificate Credits will automatically expire on the date that is 12 months from the date on which the Licensee purchased them, except for any Certificate Credit which is stated to expire on the date that is 2 months from the date of purchase, which will expire on the date stated.

(e) The Licensee acknowledges and agrees that unused Certificate Credits in a Licensee Account are:

(i) not transferrable; and

(ii) not refundable in any circumstance except as expressly provided for in this Licence Agreement, or if DEECA otherwise determines, in its sole and absolute discretion, to refund the Licensee for any unused Certificate Credits.

(f) If DEECA makes a supply under or in connection with this Licence Agreement on which GST is imposed (not being a supply the consideration for which is specifically described as GST inclusive):

(i) the consideration payable or to be provided for that supply under this Licence Agreement; and

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(ii) but for the application of this clause (GST exclusive consideration) is increased by, and the Licensee must also pay to DEECA, an amount equal to the GST payable by the Licensee on that supply; and

(iii) the amount by which the GST exclusive consideration is increased must be paid to DEECA by the Licensee without set off, deduction or counter-claim, at the same time as the GST exclusive consideration is payable or to be provided.

(g) If a payment to a party under this Licence Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

7. GENERAL TERMS AND CONDITIONS OF USE

(a) The Licensee must not or must not allow any third party to:

(i) use the Software or the Services for any purpose other than for the Permitted Purposes;

(ii) remove or alter any copyright notices displayed on the Software or the Services;

(iii) make copies of the FirstRate5 Software Application (except for back-up copies that Licensee is permitted by law to make);

(iv) develop, adapt, extend, enhance, modify or improve the Software or the Services;

(v) disassemble, decompile or reverse engineer, or create derivative works or functionally equivalent software from, the Software or the Services (except to the extent permitted by Division 4A of Part III of the *Copyright Act 1968* (Cth));

(vi) make the Software or the Services available to any other person for such unauthorised use, or otherwise attempt to discover the source code of the Software;

(vii) use or allow the FirstRate5 Software Application to be used on the internet or any other public communications network (including as a software-as-a-service, hosted, bureau or similar service);

(viii) deliberately introduce or permit the introduction of, or act or not take reasonable action in any manner that results in the introduction, threat or permit any cyber security threat including any virus, worm, trojan malicious code, or any action or inaction that causes corruption, degradation or disruption of the Software or the Services;

(ix) sublicense, distribute or make available to any person the Software or the Services other than in accordance with clause 1(c);

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(x) incorporate the Software (or any part of the Software) in any product to be made available commercially without first obtaining DEECA's prior written consent;

(xi) use the Software and the Services in a way that the Licensee knows or ought reasonably to know:

(A) misrepresents Assessment (including representing that a preview of a NatHERS Certificate is a final NatHERS Certificate);

(B) contravenes any law;

(C) is false, offensive, indecent, objectionable, harassing, obscene, pornographic, threatening, abusive, defamatory, libellous, fraudulent, tortious, or invasive of another's privacy or constitutes a breach of a person's legal rights (including Intellectual Property Rights or rights in confidential information); or

(D) is detrimental, including any access or use has or could damage, disable or impair any servers, networks or other resources used by DEECA or any of their third-party service providers or other users;

(E) in a way that constitutes misuse, or resale or other commercial use, of the FirstRate5 Software, the FR5 Website, the Whole of Home Web App and the Services;

(xii) have, or create, access or use a Licensee Account on the FR5 Website to access or use the FirstRate5 Software or Whole of Home Web App, if any of the Licensee Accounts on the FR5 Website of the Licensee are at that time disabled (unless otherwise permitted by DEECA); and

(xiii) engage in any action or attempt to circumvent any requirements to pay any applicable fees (including rendering any invoice in a manner designed to circumvent requirements to pay applicable fees).

(b) The Licensee must:

(i) comply with any reasonable directions of DEECA from time to time in relation to the use of the Software and the Services;

(ii) fully participate in and cooperate with any investigation or audit conducted by DEECA, the Commonwealth Government administrator of the NatHERS accreditation (NatHERS Administrator) or their nominees in relation to the Licensee's use of the Software and the Services;

(iii) use the Software and the Services in good faith; and

(iv) at all times comply with all of the terms and conditions of this Licence Agreement and all applicable laws, statutes and regulations in all jurisdictions that relate to the Licensee's use of the Software or the Services (including, without limitation, applicable privacy laws).

8. INTELLECTUAL PROPERTY RIGHTS

(a) Copyright and all other intellectual property rights in the Software are owned by DEECA (and/or its licensors) and are protected by Australian and international copyright law.

(b) The Licensee agrees that nothing in this Licence Agreement transfers or assigns to Licensee any intellectual property rights in the Software, and Licensee must not represent that it owns any such intellectual property rights.

(c) Any intellectual property rights in a NatHERS Certificate vest absolutely in DEECA. Subject to payment by the Licensee of the applicable Certificate Fee, DEECA grants the Licensee an irrevocable, perpetual, non-exclusive licence to use each NatHERS Certificate generated by the Licensee for the Licensee's business purposes.

9. FIRSTRATE5 TRADE MARK

(a) DEECA:

(i) is the owner of all intellectual property rights in the FirstRate5 trade mark (**Trade Mark**); and

(ii) grants to the Licensee a non-exclusive, non sub-licensable and non-transferable licence to use the Trade Mark for the term of this Licence Agreement solely to indicate that the Licensee uses the Software, to conduct Assessments in accordance with the terms and conditions of this Licence Agreement.

(b) The Licensee:

(i) must comply with all reasonable directions notified to it by DEECA regarding the manner in which the Licensee uses the Trade Mark;

(ii) must not use the Trade Mark in conjunction with or as part of any other trade mark, domain name, business name or other name or word without DEECA's prior written consent;

(iii) to the extent and in the manner reasonably required by DEECA from time to time, must accompany the use of the Trade Mark with words indicating that the Trade Mark is a registered trade mark of DEECA;

(iv) must comply with the Trade Mark Guidelines (version 2.1) issued by the NatHERS Administrator and available at

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https://www.nathers.gov.au/sites/default/files/2023-10/NatHERS%20Trade%20Mark%20Guidelines%2020231024.pdf; and

(v) must comply with the NatHERS trade mark terms of use set out in the Trade Mark Guidelines.

10. OPEN SOURCE SOFTWARE COMPONENTS

(a) The Licensee acknowledges that the FirstRate5 Software incorporates or is provided with the following open source software components:

(i) PDF-Box 2.0.18 (Copyright © 2009 – 2017, pdfbox.apache.org), which is licensed under the Apache License, Version 2.0, January 2004 http://www.apache.org/licenses/;

(ii) Swing Layout Extensions library (Copyright © February 2009, GNU Operating System), which is licensed under the LGPL-2.1 licence agreement available at http://www.gnu.org/licenses/ lgpl-2.1.html;

(iii) NSIS installers 2.46 (Copyright © 1995 – 2015 Contributors), which are licensed pursuant to the NSIS licence agreement available at http://nsis.sourceforge.net/License;

(iv) Commons CLI 1.2 (Copyright 2001-2014, The Apache Software Foundation), which is licensed under the Apache License Version 2.0, January 2004 available athttp://www.apache.org/licenses/;

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(vi) Commons IO 2.4 (Copyright 2001-2014, The Apache Software Foundation), which is licensed under the Apache License Version 2.0, January 2004 available at http://apache.org/licenses/;

(vii) Commons Codec 1.10 (Copyright 2001-2015, The Apache Software Foundation), which is licensed under the Apache License Version 2.0, January 2004 available at http://www.apache.org/licenses/;

(viii) Google-gson 2.2.4, which is licensed under the Apache License Version 2.0, January 2004 available at http://www.apache.org/licenses/;

(ix) XStream 1.4.17 (Copyright © 2003-2006, Joe Walnes, 2006-2009, 2011 XStream Committers), which is licensed under a BSD License available at http://x-stream.github.io/license.html;

(x) XPP3 Xml Pull Parse 3rd Edition (Copytright © 2002 Extreme! Lab, Indiana University), which is licensed under the Indiana University Extreme! Lab Software License Version 1.1.1 available at https://docs.bmc.com/docs/display/public/common/Indiana+University+Extreme+Lab+License;

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(xii) JCommon 1.0.23 library, which is licensed under the LGPL-2.1 licence agreement available at http://www.gnu.org/licenses/lgpl-2.1.html;

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(xviii) thumbnailator-0.4.8, which is licensed under the MIT License, available at https://opensource.org/license/mit/;

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(xx) jocl-2.3.2, (Copyright 2010 - 2019 JogAmp Community), which is mostly licensed under the new BSD 2-Clause;

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(xxv) jackson-databind-2.15.2, which is licensed under the Apache License Version 2.0, January 2004 available at https://www.apache.org/licenses/LICENSE-2.0.txt;

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(b) By installing or using the FirstRate5 Software, Licensee agrees that it has read and agreed to be bound by and abide by the terms and conditions of these open source licences.

11. UPDATES AND SUPPORT

(a) DEECA has no obligation to the Licensee to provide any updates to any Software.

(b) If the provision of any update to any Software requires any amendment to the terms and conditions of this Licence Agreement, these amendments will be notified to the Licensee and will take effect in accordance with and subject to clause 20. Otherwise, the terms and conditions of this Licence Agreement will continue unaffected by the provision of an update.

(c) Subject to clauses 11(d) and 11(e), DEECA will use reasonable efforts to assist the Licensee with:

(i) problems or issues relating to the installation of or accessing the Software; and

(ii) abnormal errors or bugs encountered with the Software.

(d) This assistance is limited to email support only during DEECA's usual business hours, and specifically excludes assistance:

(i) for any versions of the Software other than the most current version;

(ii) relating to the normal operation or use of the Software (in respect of which Licensee must consult the software's documentation);

(iii) with problems, issues or errors arising from the installation or use of the Software in a manner contrary to the software's documentation or otherwise arising from improper use of the Software; or

(iv) with hardware, operating systems or third party software.

(e) The email support referred to in clauses 11(c) and 11(d) will only be provided to the Licensee if, at the date of the Licensee's email enquiry, the Licensee has a balance of at least one Certificate Credit (as defined in the Licence Agreement) in the Licensee Account.

(f) DEECA may vary the basis on which this support is provided, or terminate the provision of this support entirely, by giving the Licensee notice in accordance with clause 16.

(g) The Licensee acknowledges that:

(i) superseded versions of the Software may not meet the requirements of the NatHERS Software Accreditation Protocol and may not generate Assessments which are suitable for generating NatHERS Certificates via the FR5 Website; and

(ii) use of superseded versions of the Software is entirely at the Licensee's own risk.

12. DISCLAIMER, LIMITATIONS AND EXCLUSIONS

(a) While the Software and the Services continue to be developed and maintained by DEECA in good faith and using all reasonable care, other than the warranty given in clause 2(a), DEECA gives no warranty in respect of the Software or the Services or their, operation, accuracy, completeness, currency or suitability for any particular purpose.

(b) Without limiting the scope of clause 12(a), DEECA does not warrant that the Software:

(i) is free from bugs, defects or programming errors;

(ii) will be continuously available or reliable;

(iii) will not be subject to unavailability arising directly or indirectly from:

i. telecommunications or internet unavailability, interruption, delay, bottleneck, failure or fault;

ii. negligent, malicious or wilful acts or omissions of third parties (including DEECA's third party service providers);

iii. maintenance or repairs carried out by DEECA or any third party service provider in respect of any of the systems used in connection with the provision of the Software and the Services or any Internet Service Provider services;

iv. any events beyond DEECA's control; or

v. services provided by third parties ceasing to be available or becoming available,

and DEECA does not accept any liability for loss or damages incurred as a result of reliance placed upon the Software or Service, excluding any liability for any loss or damage caused by DEECA's fraud or breach of law (which liability will be subject to clauses 12(g) and 12(i)).

(c) The Software provides an estimate only of the energy/generation use of specified building fabric, appliances, battery systems and renewable energy generations system when the dwelling is heated and cooled to a prescribed pattern. The accuracy of the estimate provided by the Software is dependent on factors beyond the control of DEECA, including without limitation, the following dependencies:

(i) information and data entered into the Software and Services by the Licensee (**Licensee Inputs**), including construction details, third party product and material details and the area of the dwelling;

(ii) information and data that the Software incorporates (either manually or automatically) from external websites and other external sources and third parties (**External Inputs**); and

(iii) refence data and assumptions used in the calculation of annual energy use, annual energy costs, annual energy value and annual greenhouse gas emissions are subject to change (**Amended External Inputs**); and

(iv) actual energy consumption of the relevant house or dwelling when occupied, which will be dependent on actual appliance use patterns and efficiency.

All the dependencies stated in this clause 12(c) including Licensee Inputs and External Inputs are collectively referred to as **Dependencies**.

(d) The Licensee acknowledges that DEECA has no control over such Dependencies and will not be liable for any inaccuracies resulting from Licensee Inputs or External Inputs, or Amended External Inputs.

(e) Accordingly, information about energy savings derived from or implied by use of the Software by the Licensee is indicative only and:

(i) DEECA does not warrant or guarantee that energy savings indicated by the Software will be realised; and

(ii) other than as strictly set out in a NatHERS Certificate validly obtained in accordance with this Licence Agreement, the Licensee must not make any claims (including public statements or promotion) relating to energy consumption, efficiency or savings based on the Licensee's use of, or reliance on, the Software.

(f) (**Benefit of Licensee**): Any representation or warranty made by DEECA in or under this Licence Agreement is only made for the benefit of the Licensee.

(g) (**Cap on the Parties' liability**) Without limitation to clause 12(b), each Party limits its liability to the other under or in connection with this Licence Agreement for or in respect of any loss, damage, liability, cost or expense (**Loss**) suffered or incurred by that other Party, whether direct or indirect, and however caused (including, without limitation, for breach of contract, in tort (including negligence), for breach of warranty, under statute or under any other cause of action), to the total value of Certificate Credits (as that term is defined in the Licence Agreement) paid by the Licensee to DEECA in the period of 12 months before the Licensee notifies DEECA of any claim that the Licensee has or may have against DEECA.

(h) (**Exclusion of Indirect or Consequential Loss**) Each Party excludes any and all liability to the other Party for or in respect of any and all Indirect or Consequential Loss.

(i) Clauses 12(g) and 12(h) will not apply to the liability of the Licensee under clause 14, and any liability to pay fees under this Licence Agreement, or any liability for failing to comply with the licence granted under clauses 1(a) and 16 of this Licence Agreement, or the open-source licences referred to in clause 10(b).

(j) For the purposes of clause 12(h), **Indirect or Consequential Loss** means:

(i) any and all Loss that does not arise naturally (that is, according to the usual course of things) from the event giving rise to the Loss; and

(ii) any loss of profit, loss of revenue, loss of savings, loss of business, loss of goodwill, loss of opportunity, loss of or damage to reputation (in each case, whether actual or anticipated), loss of or damage to data and lost or wasted overheads.

(k) (**Exclusion of implied terms**) Any conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied or conferred by

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statute, custom or the general law that impose any liability or obligation on DEECA are excluded under this Licence Agreement.

(l) (**Consumer Guarantees**) If any consumer guarantee within the meaning of the Australian Consumer Law (meaning the Australian Consumer Law set out at Schedule 2 to the *Competition and Consumer Act 2010* (Cth)) (**Consumer Guarantee**) applies to any goods or services provided by DEECA to the Licensee, DEECA limits its liability for any failure to comply with such Consumer Guarantee to:

(i) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and

(ii) in the case of software or other goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.

(m) Without limiting the generality of any of clauses 12(a) to 12(k), DEECA will not be liable to the Licensee for or in respect of any Loss to the extent such Loss is caused, or contributed to, by:

(i) the Licensee's improper installation or accessing of the Software and the Services;

(ii) use by the Licensee of the Software and Services other than in accordance with the documentation supplied by DEECA relevant to that Software or Services;

(iii) any failure by the Licensee to comply with any reasonable direction given to them by DEECA;

(iv) any breach by the Licensee of any term or condition of this Licence Agreement;

(v) any failure by the Licensee to input complete, accurate and non-defective information into the Software or the Services;

(vi) any improper act or omission of the Licensee or another person acting under the instruction or control of the Licensee, including any modification or attempted modification of the Software or the Services not authorised by DEECA;

(vii) use by the Licensee of the Software or the Services with or in combination with any software or equipment that is not approved by DEECA; or

(viii) any failure or malfunction of any equipment, service (including any power surge; or

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(ix) interruption to power or telecommunications services or the internet) or software not provided by DEECA, whether or not caused by the Licensee.

(n) None of clauses 12(a) to 12(l) will in each case have the effect of limiting, excluding, restricting or modifying:

(i) DEECA's liability or obligations under this Licence Agreement except to the extent permitted by law; or

(ii) the application of any Consumer Guarantee to the extent such limitation, exclusion, restriction or modification is not permitted by the Australian Consumer Law.

13. LICENSEE'S OBLIGATIONS

The Licensee must:

(a) have a valid Licensee Account on the FR5 Website to use the Software and Services;

(b) comply with the terms of this agreement;

(c) take all reasonable steps to protect the Software and the Services from unauthorised access, copying or use; and

(d) immediately notify DEECA of any actual or potential unauthorised access, copying or use of the Software and Services.

14. LICENSEE INDEMNITY

(a) The Licensee indemnifies the Victorian Government including DEECA and its officers, employees, agents and contractors (**those indemnified**), and will keep them indemnified, from and against any and all actions, claims, charges, costs (including legal costs on a full indemnity basis), expenses, losses, damages and other liabilities suffered or incurred by any of those indemnified arising directly or indirectly out of or in connection with any claim by a third party (including, without limitation, a home owner or builder) against DEECA relating to Licensee's use of or reliance on the Software, Services or any third party reference libraries or information incorporated into or used as part of the Software or the Services. DEECA will take reasonable steps to mitigate any charges, costs, expenses, losses, damages and other liabilities suffered or incurred by any of those indemnified.

(b) The Licensee is not required to indemnify any of those indemnified to the extent that a relevant action, claim, charge, costs, expense, losses, damage or liability is caused by the negligence, fraud, breach of law or breach of this Licence Agreement of any of those indemnified.

(c) To the extent that the Licensee indemnifies persons other than DEECA under clause 14(a)(the **Beneficiaries**), DEECA holds the benefit of the indemnity on trust for and may enforce the indemnity directly against the

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Licensee for and on behalf of the Beneficiaries, notwithstanding that such persons are not a party to this Licence Agreement.

15. DISCLOSURES BY DEPARTMENT ENERGY, ENVIRONMENT AND CLIMATE ACTION

The Licensee agrees and acknowledges that DEECA may disclose to:

(a) its software licensor(s) details of summary diagnostic reports and data generated by the Licensee when using that licensor's software;

(b) representatives of a relevant AAO, NatHERS, the Australian Building Codes Board or such other body responsible for the National Construction Code and other such relevant bodies, details of the Licensee's use of the Software or the Services for the purposes of any audit, inquiry or investigation into the Licensee's use of the Software; and

(c) other government departments and entities (for example CSIRO) and their third party partners details of summary diagnostic reports and data generated by the Licensee's use of the Software, or the Services for the purposes of research, analysis, policy development, scientific research and development activities, compliance, auditing, accreditation activities.

16. GRANT OF LICENCE BY LICENSEE

(a) The Licensee grants to DEECA an irrevocable, non-exclusive, nontransferable, worldwide, perpetual, royalty-free licence to use, reproduce, modify, adapt and communicate the data generated by the Licensee's use of the Software and the Services (including any NatHERS Certificate) for any purpose and to sublicense third parties (and permit those third parties to sub-license) to use, reproduce, modify, adapt and communicate the data generated by the Licensee's use of the Software and the Services (including for a fee) for the following purposes:

(i) to enable DEECA to deliver and improve the Software and the Services;

(ii) to inform public policy debate and development, as well as scientific development and research activities with other Commonwealth and State Government agencies and departments (and relevant contractors and agents);

(iii) to enable DEECA (or other third parties) to perform and conduct research and development including training or deployment of machine learning models or other derivatives of the data;

(iv) to publish the results of research or any analysis, policy development, scientific research and development, compliance, auditing, and accreditation activities in a manner that does not allow the data contained in any individual Project File or otherwise input into the Software and the Services, to be identifiable (**Aggregated Data**);

(v) to allow users of the Aggregated Data to use, sublicense, distribute, reproduce, modify, adapt, publish, translate, publicly perform and publicly display the Aggregated Data (in whole or in part) and to incorporate the Aggregated Data into other works in any format or medium now known or later developed;

(vi) to allow address linked data to be published online or via a publicly available service including as a single downloadable file on CSIRO's Australian Housing Data website or CSIRO's Data Shop any information except for any Personal Information.

(a) The Licensee warrants to DEECA that they have all rights necessary to grant to any relevant third party or Government agency or department, under clause 16(a).

17. CONFIDENTIALITY AND PRIVACY

(a) The Licensee must not disclose to any third party, without the prior written consent of DEECA, any confidential information received for the purposes of using the Software or receiving the Services. DEECA's confidential information includes its methodologies and tools. The obligations in this clause 17(a) do not apply to information which is or becomes generally available to the public (other than as a result of a breach of an obligation under this clause), is independently developed by the Licensee, or is required by law to be disclosed.

(b) The Licensee consents, and must obtain all relevant consents of any third parties, to DEECA collecting, using and disclosing Personal Information and confidential information that is provided to DEECA by way of inputs into the Software or use of the Services for the purpose of:

(i) The purposes which are set out in clause 16 of this agreement;

(ii) providing the Services;

(iii) monitoring the Licensee's use of the Software and the Services;

(iv) undertaking Assessments and the production of NatHERS Certificates (including payment of Certificate Fees);

(v) evaluating whether the Licensee's use of the Software or the Services are compliant with this Licence Agreement; and

(vi) undertaking audits, quality assurance activities and investigation activities in relation to Assessments performed by the Licensee and NatHERS Certificates produced using the Software or the Services; and

(vii) analysis, research and policy development.

(c) For the purpose of clause 17(b), the Licensee acknowledges that Personal Information and confidential information may be disclosed by DEECA to:

(i) any other person, organisation or government agency; and

(ii) any nominee, agent or representative of the NatHERS Administrator,

to the extent necessary for such persons to conduct the activities and purposes described in this clause 17(b).

(d) DEECA's privacy policy relating to information collected by DEECA may be accessed by following the link labelled 'Privacy Policy' on the FR5 Website, and forms part of this Licence Agreement.

18. SUSPENSION OF LICENSEE ACCOUNT

(a) DEECA may at its discretion disable the Licensee Account by providing notice to the Licensee. Such notice will take effect at the date specified in the notice.

(b) The period of disablement for the Licensee Account will be specified in the notice (**Period of Suspension**).

(c) The Licensee continues to be bound by this Licence Agreement during any Period of Suspension.

(d) The Licensee agrees to comply with any notification provided by DEECA (including in respect of any warning notice or notice of suspension such as those which may be issued by DEECA, or the NatHERS Administrator or on behalf of the NatHERS Administrator).

19. TERMINATION

(a) DEECA may terminate this Licence Agreement wholly or in part if:

(i) any of DEECA's rights to the licensed Software components are terminated, in which case termination will be immediately on notice;

(ii) the Software is no longer accredited, in which case termination will be immediately on notice;

(iii) for convenience at any time by giving Licensee at least 6 months' prior notice;

(iv) the Licensee is or becomes bankrupt (if the Licensee is a natural person) or insolvent, in which case termination will be immediately on notice; or

(v) the Licensee is in breach of this Licence Agreement and (if the breach is capable of remedy) fails to remedy that breach within

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14 days of receiving written notice from DEECA to remedy the breach. If the breach is not capable of remedy, DEECA may terminate this agreement immediately on giving written notice to the Licensee.

(b) The Licensee can terminate at any time for any reason upon provision of notice to DEECA.

(c) On termination of this Licence Agreement, the Licensee must:

(i) immediately cease using the Software and the Services; and

(ii) either return to DEECA, or destroy, each copy of the Software that is in the Licensee's possession or control.

(d) If the agreement is terminated for any reason:

(i) DEECA will refund to the Licensee any unused valid Certificate Credits in the Licensee Account; and

(ii) if DEECA terminates under clauses 19(a)(i), 19(a)(ii) or 19(a)(iii) the refund under this clause 19(d)(i) will be DEECA's sole obligation and liability to the Licensee in connection with the termination.

20. AMENDMENTS

(a) DEECA may at any time amend the terms and conditions of this Licence Agreement on no less than 7 days' written notice to the Licensee. When changes are made, DEECA will make a new copy of the Licence Agreement available at https://www.fr5.com.au/news.

(b) Variations will take effect upon the date specified in the notice provided under clause 20(a)(**Date of Effect**).

(c) Licensee understands and agrees that if it:

(i) creates a new Assessment; or

(ii) logs into their Licensee Account,

in the Software after the Date of Effect, then DEECA may treat the Licensee's action as acceptance of the updated terms and conditions. If the Licensee does not accept the variation, the Licensee must cease use of the Software and the Services and notify DEECA that it terminates this Licence Agreement.

(d) If the Licensee terminates this Licence Agreement under clause 20(c):

(i) DEECA will refund to the Licensee any unused Certificate Credits (as defined in the Licence Agreement) in the Licensee Account at the date of termination; and

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(ii) such refund will be DEECA's sole obligation and liability to the Licensee in connection with the termination by the Licensee.

21. NOTICES

(a) DEECA may provide a written notice under this Licence Agreement:

(i) if the notice is to all licensees, by publishing a notice on the FR5 Website; and

(ii) if the notice is to the Licensee, by notifying the Licensee by email at the email address specified in the Licensee Account.

(b) The Licensee may provide a written notice under this Licence Agreement to DEECA by emailing support@fr5.com.au.

(c) Notices published on the FR5 Website will be deemed to have been made on the day that the notice is published. If that day is not a business day in Melbourne, Victoria, or the notice is published after 5pm on a business day in Melbourne, Victoria, the notice will be deemed to have been published on the next business day in Melbourne, Victoria.

(d) Notices by email will be deemed to have been received by the addressee within one hour of the message leaving the sender's email server, provided that the sender does not receive a notification that the email could not be delivered to the addressee. If the email is sent on a day is not a business day in Melbourne, Victoria, or it is sent after 5pm on a business day in Melbourne, Victoria, the email will be deemed to have been received at 9am on the next business day in Melbourne, Victoria.

(e) Nothing in this clause 21 limits the means by which a party may otherwise lawfully effect the service of a notice on the other party.

22. GENERAL

(a) This Licence Agreement is governed by the laws of Victoria, Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria, Australia.

(b) Failure by DEECA to enforce any of the terms or conditions of this Licence Agreement will not be deemed to be a waiver of any of the rights or obligations DEECA has under this Licence Agreement.

(c) Neither party will be liable to the other for any failure to fulfil, or delay in fulfilling, its obligations cause by circumstances outside of its reasonable control. However, this clause does not apply to any obligations on the Licensee to pay for Services provided by DEECA.

(d) If any part of this Licence Agreement is held to be invalid, illegal, unenforceable or void for any reason or reasons, all of the remaining terms and conditions will remain in full force and effect.

(e) Clauses 12 (Disclaimer, Limitations and Exclusions), 14(Licensee Indemnity), 17 (Confidentiality and Privacy), 19(c) and 19(d)

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(Termination) and 22 (General) survive termination or expiration of this Licence Agreement.

(f) DEECA may by notice assign its rights, transfer is obligations or novate this Agreement. The Licensee may not assign or transfer their rights under this Licence Agreement, or attempt or purport to do so, without DEECA's prior written consent (which may be given or withheld at its absolute discretion).

23. DEFINITIONS

In this License Agreement:

AAO means an **Assessor Accrediting Organisation** accredited under the NatHERS Protocol for Assessor Accrediting Organisations, being an organisation which accredits Thermal Performance Assessors.

Assessment is either a thermal performance assessment using the FirstRate5 Software Application, or a thermal performance, appliance and energy generation assessment using both the FirstRate5 Software Application and the Whole of Home Web App. It includes the input of data to assess a design at any stage, included partial or incomplete projects started by a Licensee, and completed projects that have a NatHERS Certificate issued.

Certificate Credits means the credits provided to a Licensee upon payment of the Certificate Fee which permits a Licensee to generate NatHERS Certificates.

Certificate Fee has the meaning given in clause 6(a).

FirstRate5 Software Application means the FirstRate5 software which may be downloaded from the Site and executed locally.

FR5 Website means the FirstRate5 website located at <www.fr5.com.au>.

Intellectual Property Rights means all intellectual property rights, including patents, copyright, rights in circuit layouts, registered and unregistered designs, moral rights, registered and unregistered trade marks, service marks, trade names and any right to have confidential information kept confidential (together with any application or right to apply for registration of any of the rights referred to in this paragraph).

Invalidated NatHERS Certificate means a NatHERS Certificate which has been purchased and issued but has subsequently been withdrawn.

Licensee Account means the account created by a Licensee to use the Software.

NatHERS means the Nationwide House Energy Rating Scheme.

NatHERS Administrator means the Commonwealth Department of Industry, Science, Energy and Resources or any subsequent Commonwealth Department with administrative responsibility for residential energy efficiency ratings.

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NatHERS Certificate means an official certificate in such form as determined by the NatHERS Administrator generated by the Software Tool or Certificate Portal that describes the key thermal performance features of the building fabric, the NatHERS Energy Rating and energy loads, appliances, Whole of Home rating, details of the Accredited Assessor who carried out the assessment and the accreditation they hold, the building address, and relevant information regarding energy efficiency regulatory requirements. The NatHERS Certificate may also contain information about the energy performance of the building's appliances and on-site energy generation and storage.

NatHERS Rating Report means the report generated by non-accredited assessors), which is an official certificate in such form as determined by the NatHERS Administrator generated by the Software Tool or Certificate Portal that describes the key thermal performance features of the building fabric, the NatHERS Energy Rating and energy loads, appliances, Whole of Home rating, details of the Rater who carried out the assessment, the building address, and relevant information regarding energy efficiency regulatory requirements. The NatHERS Rating Report may also contain information about the energy performance of the building's appliances and on-site energy generation and storage.

National Construction Code or **NCC** means a performance-based code, containing all Performance Requirements for the construction of buildings. Produced and maintained by the Australian Building Codes Board (ABCB) on behalf of the Australian Government and each state and territory government. The NCC can be accessed at: https://ncc.abcb.gov.au.

Original NatHERS Certificate means the first NatHERS Certificate generated with respect to a dwelling for which Certificate Credits were deducted from the Licensee Account.

Personal Information has the same definition contained in the *Privacy and Data Protection Act 2014* (Vic).

Project File means a data file in a format approved by DEECA (as described on the Site) which the Licensee may upload to the Site in order to generate a NatHERS Certificate.

Regulation Mode means the operation of Software using a specific set of defined inputs and parameters for the purposes of completing an Assessment for achieving Deemed-to-Satisfy (DTS) NatHERS pathway compliance with a particular jurisdiction's application of the NCC.

Revised Project File means a Project File that is uploaded to replace an existing Project File.

Services means the services provided by DEECA via the Software relating to the generation of NatHERS Certificates.
Software means any software provided by DEECA to the Licensee and includes the:

(a) FirstRate5 Software Application;

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(b) FirstRate5 Website; and

(c) Whole of Home Web App.

Thermal Performance Assessor means a person accredited by an AAO to assess the thermal performance of dwellings and/or the appliances and onsite power generation using the Whole of Home Web App.
Whole of Home Web App means the FirstRate5 Whole of Home application located at < https://woh.frplus.au > to collect appliance data to generate NatHERS Certificates.

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