**RESIDENTIAL NEW CONSTRUCTION INCENTIVE PROGRAM**

**RATER PARTICIPATION AGREEMENT**

This Rater Participation Agreement (the “Agreement”) is made as of (“Effective Date”) between CLEAResult Inc. (“Company”) and with an address at the “Rater”).

**Recitals**

1. Company offers the Residential New Construction Incentive Program (the “Program”) that consolidates advanced techniques of building science for residential builders participating in the program and offers a Heating and Cooling Limited Guarantee (“Limited Guarantee”) to purchasers of homes built in compliance with the Program Requirements (“Program Homes”).

2. Rater, including its employees, has the necessary training, experience and certifications to offer the Program and perform the services as set forth in this Agreement and described as Rater Requirements attached as Exhibit A.

3. Company desires to appoint Rater as a non-exclusive authorized Rater to offer the Program and provide related services for Builders, and Rater desires to accept such non-exclusive appointment, in accordance with the terms and conditions set forth in this Agreement.

4. CLEAResult has contracted with Masco Home Services, Inc. to manage certain aspects of the Program.

NOW, THEREFORE, in consideration of the covenants and obligations contained herein and for such other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Appointment.**
	1. Subject to the terms of this Agreement, Company hereby appoints Rater, and Rater accepts such appointment, as an independent, non-exclusive Rater for promoting and soliciting participation in the Program by residential builders and developers (“Builders”).
	2. Company may appoint other raters to, and may itself and/or an affiliate, provide Services to Builders. Rater agrees that Company has made no guarantee or representation about the profitability of, or revenue from, the promotion and sale of the Program or provision of Services in connection with this Agreement. Rater agrees that it has not paid, and is not obligated to pay, to Company or any designee of Company, any fee or payment, direct or indirect for the right to enter into this Agreement or to be authorized to offer the Program under this Agreement. Rater further agrees that the parties are not entering into this Agreement for the purpose of enabling Rater to start a business.
2. **Rater’s Services.**

2.1 During the Term, Rater shall, at its own expense, perform the following services (herein referred to as “Services”):

2.1.1 Devote its best efforts to promoting the Program and soliciting participation in the Program by Builders on terms and conditions set by Company in its sole discretion;

2.1.2 Ensure that Builders participating in the Program sign the Program’s current form Participation Agreement, except as otherwise approved in writing by Company, and follow its Program Requirements, and Brand Identity Guide as well as other policies and procedures concerning the Program that Company may issue from time to time and take reasonable steps to ensure that the Builder does not offer or promote the Program until the Builder signs the Project Agreement;

2.1.2 Establish and maintain suitable sales organization, offices, equipment, and trained and qualified personnel as are reasonably necessary to carry out its obligations under this Agreement;

* + 1. Provide prompt, efficient, and courteous service to Builders;

2.1.5 Comply will all applicable laws, regulations, and codes and acquire all licenses, approvals, permits, and authorizations that are necessary to carry out its obligations under this Agreement;

2.1.6 Take reasonable steps to preserve and enhance the image, reputation, and goodwill of the Program and Company and not engage in any conduct that is detrimental to Company’s best interests;

2.1.7 Provide reports and other information to Company that it may request from time to time about the Services;

2.1.8 Investigate and report to Company with respect to any complaints or disputes with respect to the Program, including, without limitation, any Limited Guarantee offered by Company under the Program;

2.1.9 Maintain complete and accurate records concerning each Builder’s participation in the Program and inquiries and transactions relating to the Program and/or such Builder’s participation and make such records available to Company upon reasonable notice and request for purposes of inspection, copying, and audit;

2.1.10 Perform Program Testing Services on Program Homes as set forth in section 2.2; and

2.1.11 Provide additional services that Company may reasonably request during the term of this Agreement.

* 1. Program Testing Services.
		1. Rater shall test and inspect Program Homes in accordance with the protocols and other processes established by Company and described in Scope of Work attached as Exhibit B. Current Program Requirements and testing and inspection protocols and procedures are available at the Program Website.
		2. Rater shall submit to Company all test and inspection data for each Program Home in a form specified by Company electronically and at least weekly using the Program’s Project Manager.
	2. Only Rater’s employees who meet the following qualifications shall provide Services: (1) certified by RESNET to provide HERS testing, (2) successfully completed building science, sales and other training as may be required by Company; (3) have required qualifications, certifications, licenses and/or registrations to perform Services; and (4) satisfy any other requirements set forth in this Agreement to provide Services, including, without limitation, Sections 2.8 and 2.9.

2.4 Rater shall comply with the RESNET conflict of interest disclosure regulations and with any other conflict of interest or similar regulations applicable to the Services performed. A copy of RESNET’s current conflict of interest disclosure form is attached as Exhibit C. Further, Rater agrees that it is not, and shall not become, a party to any contract or other obligation that would conflict with its obligations under this Agreement.

2.5 Rater shall, and warrants that it will, perform Services impartially and independently and shall not knowingly provide untrue, inaccurate or incomplete test results or other data to Company or to any other person to whom it provides such information pursuant to this Agreement. Rater shall, and warrants that it will, perform Services in a good and workmanlike manner according to the highest established trade practices and standards; in accordance with applicable specifications and obligations set forth in this Agreement and the applicable Project Agreement and in full compliance with all laws, ordinances, codes, regulations, and lawful requirements. Rater warrants that it is, and shall remain during this Agreement, properly licensed to perform Services as required by local, state, and federal authorities and that it will provide copies of the licenses must be provided to Company upon request. Rater further acknowledges that its failure to have or maintain the proper licenses shall be cause for immediate termination of this Agreement. The foregoing warranties shall survive any inspection by Company of Services. Acceptance by Company of all or any part of the Services shall not be deemed a waiver by Company of its right to reject any Services due to their failure to conform, or due to the discovery of latent or patent defects in them, or due to a breach of warranty. If, at any time, it appears, or a claim is made, that there is any breach of Rater’s warranty, Rater, after being notified of such breach by Company, Builder or other third party, shall immediately remedy such breach at Rater’s sole expense. If Rater fails to remedy any such breach immediately, Company shall have the right, at Company’s sole discretion and without prejudice to any other remedy it may have, to repair or remedy such breach at Rater’s sole expense. For any breach of warranty by Rater, Company shall have any and all remedies available to it either in law or equity.

2.6 Rater shall provide Services using appropriate materials, analytical and diagnostic procedures and tools and shall be responsible for providing, at its own cost, all equipment, materials and other resources reasonably required to fulfill its obligations under this Agreement. Rater shall obtain all building, construction, and other permits; licenses; and other approvals and inspections required to perform and/or complete Services. Rater shall be responsible for any and all fines, charges or penalties arising from its Services.

2.7 Rater agrees to comply with the Occupational Safety and Health Act of 1970 (the “Act”) and any and all amendment, rules and regulations issued pursuant to the Act. Rater shall be familiar with all of Company’s safety programs and safety rules and shall have its own safety program, which shall be made available to Company upon request that includes Company’s rules and complies with all federal and state rules. Rater shall be responsible for managing the safety its own employees at all times while on a project site. In addition, Rater shall have a Zero Tolerance Drug Free Workplace. Rater shall be provided with Company’s Hazard Communication Program and the Safety Program Overview, and Rater will be familiar with both programs.

2.8 Rater must maintain complete and current files for each employee providing Services including a copy of the valid Social Security card (unrelated to I-9 processing), copy of the current and valid driver’s license (if the employee is authorized to drive company vehicles), the employment application, and the I-9 form with copies of documents presented by the employee. Rater must verify that each employee providing Services is eligible to be legally employed in the United States. It is against the policy of Company and a violation of this Agreement for Rater to utilize any unauthorized foreign worker for any reason.

2.9 Any employee of Rater performing Services must have been subjected to and successfully passed a criminal background check by Rater. To successfully pass the criminal background check, the criminal history record information must show that in the seven (7) years preceding the date the information was obtained (except in Texas where the requirement is twenty (20) years for a felony and ten (10) years for a misdemeanor), the employee was not convicted of a crime (a) against a person; (b) against property; (c) involving criminal indecency; or (d) involving sexual misconduct. If any employee of Rater will be working in an occupied residence, Rater must have completed and successfully passed a criminal background check on the employee within at least one (1) year prior to performing Services. Company reserves the right to require subsequent or additional background checks on any employee of Rater performing Services. Any employee of Rater that does not successfully pass a criminal background check as set forth in this Section shall not perform any Services.

1. **License and Advertising.**

3.1 Pursuant to the terms and conditions of this Agreement, Company grants to Rater a limited, revocable, non-exclusive, and non-transferable license (with no right to sublicense) to use Company trademarks and service marks concerning the Program (“Marks”) and to use promotional materials provided by or on behalf of Company (“Materials”) solely in the performance of Services. Rater shall use Marks in accordance with policies and/or guidelines established by Company concerning their use. Rater shall not use any of the Marks in its corporate or business name.

3.2 Pursuant to the terms and conditions of this Agreement, Company grants to Rater a limited, revocable, non-exclusive, and non-transferable license (with no right to sublicense) to use promotional materials provided by Company or an a vendor approved by Company (“Materials”) solely in the performance of Services. Rater shall use Materials in accordance with policies and/or guidelines established by Company concerning their use. Rater may prepare and/or use its own materials to promote the Program provided that such materials fully comply with all policies and/or guidelines established by Company concerning to promotion of the Program. With respect to its oral or written statements and representations concerning the Program, or any part thereof, Rater shall not deviate from statements and representations approved by Company as set forth in its policies, guidelines and/or current Materials.

1. **Company’s Responsibilities.**
	1. Company will evaluate and respond to requests by Builders to participate in the Program promptly. Rater acknowledges and agrees that (a) Builder must sign the Program’s Project Agreement and comply with all other Company policies and/or guidelines concerning Builder participation in the Program as conditions to its participation in the Program; (b) Company has the sole right to accept or reject any request by a Builder to participate in the Program or to terminate a Builder’s participation in the Program; and (c) it shall have no recourse against Company if Company rejects any such request or terminates any such Builder.
	2. Company will make available Materials and training available to Rater as it deems appropriate. Company will reasonably notify Rater about the Program and related business practices, policies and guidelines, as well as any changes thereto. Rater acknowledges and agrees that Company may establish, and amend without prior notice, any terms and conditions, business practices, policies and guidelines for the Program in its sole discretion and shall have no liability to Rater as a result.
	3. Company will reasonably assist Rater in promoting the Program and performing Services in its discretion.
	4. Subject to other terms and conditions in this Agreement, Company will issue a Limited Guarantee for each Program Home (a) that meets the Program Requirements, (b) that has been tested and successfully meets program testing requirements. If any of these conditions is not met, Company shall not, and shall have no obligation to, provide a Limited Guarantee for that home. Rater further acknowledges and agrees that Company shall have no liability whatsoever to Rater, Builder, the homeowner or any other third party if Company does not issue a Limited Guarantee if any of these conditions is not met.
	5. During the term of this Agreement, Company will identify Rater as an authorized Rater under the Program on the Program Website.
2. **Builder Participation Fees and Other Payments.**

5.1 Builders participating in the Program shall pay Rater a fee for each Program Home in an amount agreed upon by Builder and Rater (“Builder Fee”). Rater is solely responsible for invoicing and receiving payment from Builder, and shall have no recourse against Company for Builder’s failure to pay such fee.

* 1. Rater agrees to pay Company $50 per plan Quality Assurance fee for each plans submitted for program participation.
1. **Parties’ Relationship.**

6.1 For all purposes, the relationship between the parties is that of an independent contractor and not of employment or as an employee, servant, agent, partner, or joint venturer. Rater shall determine the means and manner of performance of the Services, and shall not be required to follow any routine or procedure established or prescribed by Company while performing the Services. Neither Rater nor its employees or agents shall be treated as an employee, servant, agent, partner or joint venturer of Company. Neither Rater nor its employees or agents shall be entitled to or receive any employee benefits provided by Company. Rater and its employees and agents have no authority to assume or create any obligation or liability, express or implied, on behalf of Company or to bind Company in any manner and shall not use Company’s name or designation in any telephone listing, business card or any other form of advertising without Company’s express prior written authorization. Neither Rater nor its employees or agents shall be subject to the direction or control of Company except to the extent, if any, such direction or control may be required by applicable law or regulation. Neither Rater nor its employees or agents shall hold themselves out to be employees or agents of Company. Rater is solely responsible for the payment of all social security taxes, unemployment contributions, and federal and state income taxes related to the compensation paid by Company. Rater, for the benefit of Company only, waives its statutory rights of confidentiality and non-disclosure under IRC 6103 (26 U.S.C. 6103) and authorizes the disclosure of taxpayer information to the Internal Revenue Service to Company upon Company’s request for same to the Internal Revenue Service.

6.2 Rater will have full responsibility in determining labor relation policies, wage rates, and fringe benefits with respect to its employees and agents. Rater will have full responsibility for the negotiation, performance of, and compliance with the provisions of any and all applicable bargaining agreements which it has or may at any time enter into or which it is otherwise subject, including without limitation, the requirements to make timely dues and other deductions and to pay wages, overtime, retirement, health and welfare and other fringe benefits at the rates required. Rater shall have full responsibility for compliance with all federal or state laws regulating pension plans, welfare plans, fringe benefits, wages, or other compensation or any other matters relating to its employees and agents. In order to avoid any possible claim, lien or assignment against Company or any Builder regarding Rater’s obligations under this Section, Company may require the Rater to provide proof or such payments in a form or manner as Company may request.

6.3 Rater shall use its best efforts, whenever applicable, to only employ persons capable of working harmoniously with all construction trades, craft or other entities and individuals who may provide services associated with the performance of the Services.

6.4 Any agreement between Rater and any Builder pursuant to which Rater performs any services or work for Builder (a “Rater/Builder Agreement”) shall be solely between Rater and Builder. Company shall not be a party to, bound by or subject to any such agreement.

7. **Insurance.**

7.1 Rater, at its own cost and expense, will at all times maintain insurance coverage in the minimum amounts as specified in Exhibit D to completely protect the Company and Rater from any claims for injury or death to persons or damage to property that may in any way arise from or be occasioned by the performance of the Services. The limits and coverage set forth on Exhibit D are designed to meet the minimum acceptable standards of the Company, and shall not be construed as a recommendation or statement of adequate insurance limits, coverage, terms or conditions for Rater. Rater is responsible for consulting with its own insurance advisors to ensure that it has adequate insurance coverage to meet the obligations of this Agreement and its business operation. Rater shall furnish certificates for all such insurance to the Company before commencing the Services. Rater shall designate the Company as an “additional insured” on the insurance policies as specified in Exhibit D.

8. **Waiver of Liens.**

8.1 To the fullest extent permitted by law, Rater agrees to waive and does hereby expressly waive and relinquish all right to a lien upon the premises where the Services were provided by Rater (as defined in “Section 2. Rater’s Services”) and are performed to the extent Rater has been compensated for such Services. Rater agrees to provide Company with affidavits and/or lien waivers upon request.

8.2 Rater further agrees to keep such premises free and clear of all mechanic liens related to the Services provided by the Rater and will furnish Company evidence of proper affidavits and/or lien waivers provided to Builder, as may be requested by Company, and to indemnify and defend Company against any and all liabilities, claims, judgments, liens, losses, costs, expenses, demands, penalties, attorney fees and other costs of whatsoever nature arising or resulting from any lien upon any premises relating to the Services provided by Rater.

9. **Indemnification.**

9.1 Rater herby agrees to defend, indemnify and hold harmless Company and its affiliates, and their respective officers, directors, agents and employees (collectively referred to as “indemnities”) from all liabilities, claims, judgments, liens, losses, costs, expenses, demands, penalties, attorney fees, and other costs of whatsoever nature, except to the extent caused by the sole negligent acts or omissions of the indemnities, arising or resulting from: any Services; any breach by Rater of the obligations required by this Agreement; a Rater/Builder Agreement; Rater’s violation of any law, code, or regulation; injury to or death of any person or damage to or destruction of any property arising out of or in any way connected with the performance of the Services by Rater or any employee or agent of Rater (collectively, “Claims”).

9.2 Rater’s obligations under this Section 9 shall not be limited in any way by Rater’s insurance coverage requirements in this Agreement.

9.3 The parties shall reasonably cooperate with each other in the handling, adjustment, or defense of any Claim. Company shall have the right, but not the obligation, to participate, as it deems necessary, in the handling, adjustment, or defense or any such Claim, at its own expense. Notwithstanding the above provisions of this Section, neither party shall enter into any settlement or compromise of any Claim for the benefit of the other party without the express prior written consent of that party.

10. **Term and Termination.**

10.1 This Agreement shall be effective as of the Effective Date and shall continue for a period of one (1) year and thereafter for additional successive periods of one (1) year; provided however, subject to the terms and conditions of this section, either party may terminate this Agreement, without cause and without liability as a result of such termination, upon thirty (30) days prior written notice.

10.2 Notwithstanding Section 10.1, the Company may terminate this Agreement for cause effective immediately upon written notice to Rater. Written notice may state that the termination is for cause, but need not specify the facts constituting cause. “Cause” shall include, but not be limited to, (i) Rater’s failure to cure any breach of this Agreement within fifteen (15) days of Company’s written notice of such breach; (ii) engaging in conduct which in Company’s sole judgment creates a conflict of interest or is detrimental to Company; (iii) any misrepresentation in connection with the Program or of any policy or service of Company; (iv) failure to maintain good credit standing with Company and to pay all invoices when due; and (v) Rater does not perform Services impartially and independently or knowingly provides untrue, inaccurate or false test results or data.

10.3 Upon termination or expiration of this Agreement, Rater shall promptly discontinue performing Services. Rater shall stop (i) identifying itself as an authorized Rater of Company or the Program; (ii) using Company’s name and all variations thereof, trademarks and service marks; and (iii) using any sales literature, samples, promotional materials, and Company’s Confidential Information in its possession. Notwithstanding the foregoing, unless this Agreement is terminated for cause pursuant to section 10.2, Rater may complete any Services in process on the date of termination or expiration in accordance with the terms and conditions of this Agreement.

10.4 Termination of this Agreement shall not release Rater from its obligation to pay any sum then or subsequently owed to Company pursuant to this Agreement. Company shall not be liable to Rater for compensation, loss or damages of any kind or nature whatsoever arising from or relating to the termination of this Agreement.

11. **Interpretation and Severability.**

11.1This Agreement shall be governed by and construed and enforced in accordance with the laws of the state of North Carolina. If for any reason any provision of this Agreement shall be held by an arbitrator or a Court of competent jurisdiction to be void or unenforceable, the same shall not affect the remaining provisions of this Agreement.

12. **Assignment.**

12.1Rater may not assign the whole or any part of the Services to any third party without the express written consent of Company. This Agreement shall be binding upon Rater and its executors, heir, beneficiaries, assigns approved by Company, and others successors in interest and shall inure to the benefit of Company and its successors and assigns. All subsidiaries, affiliates, and successors in interest of or to Company are intended to be third party beneficiaries of this Agreement and Company’s subsidiaries and its successors and assigns may enforce its terms. An assignment of the whole or any part of this Agreement by Rater does not relieve Rater of the whole or any part of the obligations of Rater under this Agreement.

13. **Entire Agreement; Modification and Amendment.**

13.1This Agreement contains the sole and entire agreement between the parties and supersedes all prior discussions and agreements between the parties. This Agreement shall not be modified or amended in any manner except by an instrument in writing signed by the parties by an official or agent of the parties in their authorized capacity.

14. **Ownership of Works; Confidentiality.**

14.1The Parties agree that Company owns all right, title and interest in and to all materials, information, data, records, or other proprietary materials of any kind or nature, tangible or intangible, including, without limitation, Confidential Information, information regarding Customers, testing and certification results, and all copyrights, patents, trademarks, trade secrets, and any other intellectual property rights, developed or prepared by Contractor specifically in connection with its performance of Services under this Agreement or provided by Company to Contractor in connection to this Agreement (such information is collectively referred to herein as “Works”). Contractor will cooperate fully with Company and execute documentation as Company may request in order to establish, secure, maintain, or protect Company’s rights with respect to the Works.

14.2 Rater will be provided one or more of the following: access to Confidential Information of Company and its affiliates; specialized training; contact with Customers; and/or support to help develop goodwill with Customer and business associates for the benefit of Company. “Confidential Information” means all information that relates to the Services, or to the business, services, Customers, suppliers, and products of Company or its affiliates disclosed by Company or its Customers to, made available to Contractor by Company in connection with this Agreement or developed or prepared by Contractor specifically in connection with its performance of Services under this Agreement. Notwithstanding the foregoing, “Confidential Information” shall not include (i) any information that is or becomes publicly available without breach of this Agreement by Rater, (ii) is independently developed by Rater without use of any Confidential Information and without any connection to this Agreement, or (iii) is received by Rater from a third party that does not have an obligation of confidentiality to Company or its affiliates. Rater will take all reasonable steps and precautions to insure that the Confidential Information is kept secret and confidential for the sole use and benefit of Company.

14.3 In the event of a breach or threatened breach by Rater of any of the protective covenants in this Section, Company would suffer irreparable harm, therefore, in addition to any other remedy available to the Company at law or in equity, at Company’s option, all obligations then or thereafter due Rater from Company may be terminated and Company, without posting any bond (which Rater hereby waives), shall also be entitled to obtain, and Rater agrees not to oppose a request for (other than denying on purely factual grounds that Rater has actually breached or threatened to breach such provisions) equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction, an accounting of any profits obtained by Rater on account of such breach.

14.4 Upon termination or expiration of this Agreement, Rater shall, upon written request, promptly return all Works and Confidential Information to Company.

15. **Miscellaneous.**

15.1 **Notices.** All notices, consents and approvals under this Agreement must be delivered in writing by courier, by electronic facsimile (fax), or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at its address set forth above, and if to Company, to the attention of Any notice will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner. Either party may change its address by giving written notice of the new address to the other party.

15.2 **Counterparts.** This Agreement may be executed in counterparts, by facsimile, or both, each of which will be considered an original, but all of which together will constitute the same instrument.

15.3 **Force Majeure.** Neither party will be liable for any failure to fulfill its obligations hereunder (except failure to pay) due to causes beyond its reasonable control including, but not limited to, acts or omissions of government or military authority, acts of God, shortages of materials, transportation delays, acts of terrorism, power shortages or outages, earthquakes, fires, floods, labor disturbances, riots, or wars. Either party experiencing such an event shall give the other party notice of the same as promptly as possible under the circumstances.

15.4 **Full Power.** Each party warrants that it has full power to enter into and perform this Agreement, and the person signing this Agreement on such party’s behalf has been duly authorized and empowered to enter into this Agreement.

15.5 **Limitation of Liability.** Except WITH RESPECT TO RATER FOR ITS breach of Section 14, gross negligence, willful misconduct or indemnification obligations, neither party shall be liable for any consequential, incidental, indirect, special, or punitive damages arising out of or relating to its acts or omissions under this Agreement, regardless of the form of action, whether in contract, negligence, tort, strict liability or otherwise, and even if foreseeable or if such party has been advised of the possibility of such damages.

15.6 **Expenses.** Except as expressly set forth in this Agreement, all costs and expenses (including attorneys’ fees and costs) incurred in connection with this Agreement, and the performance of the transactions and obligations contemplated hereby, will be borne by the Parties incurring such expenses.

15.7 **Cumulative Remedies.** Except as otherwise expressly limited or provided herein, all rights, privileges, and remedies conferred by this Agreement upon the parties will be cumulative and are in addition to any rights, privileges and remedies available to the Parties at law or equity.

15.8 **Books and Records; Audits.** Rater shall maintain its books and records concerning the Services and this Agreement in accordance with commercially reasonable business standards. Company may review such books and records upon reasonable notice during normal business hours for the purpose of ensuring Rater’s compliance with its obligations under this Agreement. Contractor shall retain such books and records for 20 years after termination or expiration of this Agreement.

15.9 **Dispute Resolution.** The parties shall use all reasonable efforts to resolve any disputes, claims, or controversies of any nature arising out of or relating in any way to this Agreement or any breach thereof (“Disputes”) by good faith negotiations between authorized representatives of the parties. If such negotiations are unsuccessful and Company does not request binding arbitration as set forth below in this section, any and all Disputes shall be subject to the exclusive jurisdiction and venue of the state and/or federal courts located in Raleigh, North Carolina, and each party consents to the personal and exclusive jurisdiction of such courts. If requested by Company, any and all Disputes shall be resolved exclusively and finally by binding arbitration administered by the American Arbitration Association (AAA) and conducted in accordance with the AAA’s Construction Industry Arbitration Rules (the “Rules”). The arbitration shall be conducted in Raleigh, North Carolina. The parties shall agree upon an arbitrator, or if the parties cannot agree within 30 days of the filing of an arbitration demand, an arbitrator shall be appointed by the AAA in accordance with the Rules. Any decision rendered in such arbitration proceedings shall be final and binding on the parties, and judgment may be entered thereon in any court of competent jurisdiction. The parties shall share equally the costs of such arbitration. To preserve Company’s right to require arbitration, Rater shall provide Company with not less than fifteen (15) days’ written notice before it commences any legal or equitable action. The arbitration, or any part of it, shall not be consolidated with any other arbitration and shall not be conducted on a class-wide or class action basis. Notwithstanding the foregoing, Company at any time may seek injunctive or equitable relief in a court of competent jurisdiction in the event of a breach or threatened breach of any provision of this Agreement. If Company prevails in any arbitration or legal or equitable action, Rater shall reimburse Company for its reasonable costs and attorneys’ fees incurred in connection with such arbitration or action.

15.10 **Survival.** Sections 7, 8, 9, 11, 14, and 15 shall survive the expiration or termination of this Agreement.

The parties have executed this Agreement as of the date referred to on page 1 of this Agreement.

**CLEAResult, Inc.** **Rater:**

By: By:

Its: Its:

Date: Date:

 Tax Identification No:

**Exhibit A**

**RATER REQUIREMENTS**

**RESIDENTIAL NEW CONSTRUCTION IINCENTIVE PROGRAM**

**RATER AGREEMENT**

To be accepted into the Residential New Construction Incentive Program, Raters must first meet the following requirements**:**

**Be HERS certified and in good standing with RESNET**

**Complete a Rater Participation Agreement**

**Complete one of the following building science training modules**

* Advanced Energy Building Science Masters Certification (2 day live event)
* Environments For Living Program master Certification (online course)
* Advanced Energy Building Science Masters Certification (online course)
* EEBA Houses That Work Education Series (online or live event)
* BPI Building Analyst Certification

**Attend a 3-hour Orientation Training on the Program processes and procedures**

**Exhibit B**

**SCOPE OF WORK**

**RESIDENTIAL NEW CONSTRUCTION IINCENTIVE PROGRAM**

**RATER AGREEMENT**

Every home participating in the Residential New Construction Incentive Program must be 100% tested and data must be entered into Project Manager to meet Program Requirements. For purposes of the incentive, this HERS Index score must exclude any Solar Photovoltaic (PV) system that may be installed on the home.

**Framing /Air Barrier Inspection**

Objective: Inspect fire; smoke and draft stop installation and proper sheathing between the conditioned space and non-conditioned space for openings greater than one square inch between the conditioned space and unconditioned areas (the attic, crawlspace, garage or outdoors). Inspect that all walls greater in height than 12’ have a rigid sheathing applied on the attic side of the wall.

Inspect the following framing details for openings to the attic, crawlspace, garage or outdoors:

* Floors systems
* Tubs
* Interior and exterior cantilevers
* Fireplaces
* Shafts and chases
* Dropped ceilings
* Double framed walls
* Furred walls
* Kitchen soffits/bulkheads/furred downs
* Stair ways
* Brick pockets
* Wiring, plumbing, venting, ducting and pipe penetrations

Inspect air barrier continuity throughout the structure, when applicable, this shall include features such as knee walls, interior soffits, garage interfaces, intersecting walls.

Inspect for:

* The air barrier separating the conditioned space from non-conditioned areas shall be continuous.
* Holes sealed with material capable of stopping airflow. Fiber insulation shall not be used as an air barrier in these applications.
* All penetrations in the top and bottom plates sealed, including bottom plates to concrete slabs.
* All interior soffits, chases, and drop ceilings capped with a rigid material capable of stopping airflow.

**Window Inspection**

Inspect Windows for a solar heat gain coefficient (SHGC) of .25 to meet the requirements of the Residential New Construction Incentive Program.

Inspect Windows for an overall U-value of .32 (as certified by the National Fenestration Ratings Council (NFRC)) to meet the requirements of the Residential New Construction Incentive Program.

**Insulation Inspection**

Objective: Inspect insulation installation.

Inspect insulation for the following:

* Gaps
* Voids
* Compression
* Misalignment
* Wind Intrusion

Inspect that insulation is installed according to manufacturer’s specifications paying attention to gaps, voids, compression, and wind intrusion.

Inspect that insulation and air barrier is installed in physical contact with each other.

Inspect that insulation in knee walls are fastened in such a way that it is in physical contact with the air barrier.

**Duct Leakage Testing/Inspection**

Objective: Measure the total duct leakage and leakage to the outside of the duct system, which consists of both the supply, and return distribution systems.

Test air duct tightness at final stage in the following manner:

**Duct System Preparation**

* Temporarily seal all supply air boots
* Temporarily seal all air returns, other than the largest return
* Temporarily seal the air return where the Duct Blaster is attached to assure that the only opening in the return is the Duct Blaster attachment collar
* Temporarily seal all air returns if they are all smaller than the duct attachment collar of the Duct Blaster. If this is the case, the Duct Blaster shall be attached to the blower compartment of the air handler unit. The access panel opening shall be temporarily air sealed to assure that the only opening in the panel opening is the Duct Blaster attachment collar
* Attach the Duct Blaster to the supply plenum if testing is required where there is no air-handling unit. If there is a return duct it shall be tested in the same manner. Place the duct pressure tap in a supply duct in the middle of the area served by that duct system.

**Duct Tightness Test**

Connect a calibrated Duct Blaster to the duct system per the above section (Duct System Preparation). Attach the Duct Blaster to the supply plenum if testing only the supply ducts and to the return when only testing the return ducts. Depressurize the ducts to 25 Pa then measure and record the flow through the fan (CFM25). Pressurization may be used were required by local authority.

**Disconnected Duct Inspection**

During the final blower door test, check each supply register and return grille, not more than 10 feet from the floor directly beneath it, to make sure that a large amount of air is not coming out due to a disconnection during construction.

**Supply and Return Connection Inspection**

Inspect the connection of the supply and return plenum to the air handler to make for sealed connection.

**Duct Insulation Inspection**

Inspect ducts outside of conditioned space for a minimum of R-8 insulation to meet Program Requirements.

**Program Duct Tightness Requirement**

Inspect air supply and distribution ducts located in non-conditioned areas for a minimum of R-8.

Inspect that all duct connections, not ‘Factory Sealed’, are sealed with a UL listed mastic product.

The performance criteria for duct tightness is 4% of the total conditioned floor space area in cubic feet per minute or less at 25 Pa

Tested homes shall be measured with a duct test rig using the Testing Protocol specified by the Residential New Construction Incentive Program.

**Minimum Data Collection**

* Duct Blaster location during test
* Depressurization (or pressurization where required)
* Flow through the fan when the duct system is at a reference pressure of 25 Pa

**Building Air Leakage Testing**

Measure the leakage rate of all surface areas that separate the conditioned space from outdoors.

**Conduct b**uilding air tightness tests in the following manner:

**House Preparation**

* Close all windows and exterior doors shall be closed
* Temporarily seal all dryer vents and fresh air ventilation ducts
* Temporarily seal all make-up and fresh air inlets
* Temporarily seal or fill all “P” traps with water
* Open garage car entry doors during testing
* Open all doors that open to the outside for sunrooms, storage rooms, utility rooms or closed-in porches that are not conditioned and close any entry way to the house
* Close all attic access doors and hatches where the attic space is not inside the conditioned space
* Open access doors or hatches for all spaces above the ceiling of living spaces that are either directly or indirectly conditioned (i.e., “attics” that have insulation installed in full contact with the roof deck)
* Open all access doors or hatches for all non-vented crawl spaces that are either directly or indirectly conditioned if the access is located inside conditioned space. Close the access door if it is located on the exterior foundation wall
* Close all fireplace dampers
* DO NOT temporarily seal kitchen and bath vent fans

**Air Tightness Test**

* Place a calibrated blower door in an exterior door or window that is directly exiting to the outdoors. Doors or windows exiting into garages, sunrooms, closed in porches or screen rooms and screen porches shall not be used.
* Depressurize the house to 50 Pa then measure and record the flow through the fan (CFM50). *Pressurization may be used were required by local authority.*

**Program Requirement**

The air barrier separating the conditioned space from non-conditioned areas shall be continuous.

Progress Energy Program performance criteria for air tightness:

 4 ACH at 50 Pa or 24% of square footage of surface area (SFSA)

Homes must be measured using a blower door, following the Testing Protocol described in the Residential New Construction Incentive Program Requirements

**Minimum Data Collection**

* Blower door location during test
* Depressurization or pressurization
* Flow through the fan when the house is at a reference pressure of 50 Pa

**Fresh Air and Spot Ventilation Flow**

Objective: Measurement of the amount of airflow through both intake and exhaust ducts of fresh air ventilation systems and through each bath and kitchen spot ventilation fan.

Fresh air and spot ventilation flow tests shall be conducted in the following manner:

###### Preparation for Test

* Turn on air handler when there is a fresh air ventilation duct connected to the return air system.
* Turn on the ventilation system when there is a manufactured system.

###### Test Procedure

* Measure the flow of all ventilation ducts using a calibrated inline flow grid and record minimum ventilation flow.

###### Program Requirement

Bathrooms 20 CFM continuous or 50 CFM intermittent

Kitchen 100 CFM per station(s)

Fresh Air Ventilation The number of bedrooms plus one, multiplied by 7.5 CFM plus 0.01 CFM per square feet of conditioned floor space with a 33% minimum duty cycle

**It is important that if a plan review has been completed for a project that the modeled target for Fresh Air Ventilation is met.**

Delivered outside air shall not exceed the minimum rate requirement by more than 10% unless accounted for in the designed load calculations.

Outside air supplied by supply-only or balanced ventilation systems shall be filtered and shall include at minimum a manual damper or other means of control.

**Minimum Data Collection**

Flow of fresh air ventilation

* Flow of each bath and kitchen vent fan

**Carbon Monoxide Detector(s) Inspection**

Objective: Inspect number and location of CO detectors installed per program requirements.

**Program Requirement**

Hardwired, carbon monoxide (CO) detectors shall be installed as follows in houses having attached garages, fireplaces, wood stoves, or combustion appliances:

Page 5 of 6

* A minimum of one detector per house level or story.
* Alarms shall be placed near or outside each sleeping area (one alarm can serve the typical three bedrooms at the end of a hall).
* In homes with two or more sleeping areas, one alarm for each area.
* Any bedroom having a fireplace shall have one alarm in the room in addition to the alarm outside that room.
* Homes with elevators that open to a garage must have one alarm near each elevator door opening to the interior of the residence.

**Minimum Data Collection**

Visual inspection that standard has been met.

**Exhibit C**

**RESNET CONFLICT OF INTEREST FORM**

**RESIDENTIAL NEW CONSTRUCTION IINCENTIVE PROGRAM**

**RATER AGREEMENT**

**RESNET HOME ENERGY RATING**

**Standard Disclosure**

**For home(s) located at: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**City:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ State:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*Check the applicable disclosure(s) in accordance with the instructions on the reverse of this page:*

1 [ ] The Rater or the Rater’s employer is receiving a fee for providing the rating on this home.

2. [ ] In addition to the rating, the Rater or Rater’s employer has also provided the following

consulting services for this home:

[ ] A. Mechanical system design

[ ] B. Moisture control or indoor air quality consulting

[ ] C. Performance testing and/or commissioning other than required for the rating itself

[ ] D. Training for sales or construction personnel

[ ] E. Other (specify)

3. [ ] The Rater or Rater’s employer is:

[ ] A. The seller of this home or their agent

[ ] B. The mortgagor for some portion of the financed payments on this home

[ ] C. An employee, contractor or consultant of the electric and/or natural gas utility serving this

home

4 [ ] The Rater or Rater’s employer is a supplier or installer of products, which may include:

**Installed in this home by: OR Is in the business of:**

HVAC systems......................................... [ ] Rater [ ] Employer [ ] Rater [ ] Employer

Thermal insulation systems ..................... [ ] Rater [ ] Employer [ ] Rater [ ] Employer

Air sealing of envelope or duct systems . [ ] Rater [ ] Employer [ ] Rater [ ] Employer

Windows or window shading systems..... [ ] Rater [ ] Employer [ ] Rater [ ] Employer

Energy efficient appliances...................... [ ] Rater [ ] Employer [ ] Rater [ ] Employer

Construction (builder, developer, [ ] Rater [ ] Employer [ ] Rater [ ] Employer

construction contractor, etc)

Other (specify):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [ ] Rater [ ] Employer [ ] Rater [ ] Employer

5 [ } This home has been verified under the provisions of Chapter 6, Section 603 “Technical

Requirements for Sampling” of the Mortgage Industry National Home Energy Rating Standard as

set forth by the Residential Energy Services Network (RESNET).

Rater’s Printed Name Certification #

Rater’s Signature Date

I attest that the above information is true and correct to the best of my knowledge. As a Rater or

Rating Provider I abide by the rating quality control provisions of the Mortgage Industry National

Home Energy Rating Standard as set forth by the Residential Energy Services Network

(RESNET). The national rating quality control provisions of the rating standard are contained in

Chapter One 4.C.8. of the standard and are posted at

http://resnet.us/standards/RESNET\_Mortgage\_Industry\_National\_HERS\_Standards.pdf

**The Home Energy Rating Standard Disclosure for this home is available from the rating**

**provider.**

RESNET Form 03001-2 - Amended April 24, 2007

**Exhibit C**

**RESNET CONFLICT OF INTEREST FORM**

**RESIDENTIAL NEW CONSTRUCTION IINCENTIVE PROGRAM**

**RATER AGREEMENT**

**RESNET HOME ENERGY RATING**

**Standard Disclosure Instructions**

The “Home Energy Rating Standard Disclosure” form shall be completed for each home that

receives a Home Energy Rating and shall be provided to the rating client who is responsible to

provide a copy to the home owner/buyer.

In the case of “sampling”, sufficient copies shall be distributed to cover all homes in a batch.

Each form must include, at a minimum, the name of the community/subdivision and city and state

where the home is located.

Each form must accurately reflect the proper disclosure for the home that it is rated (i.e. it should

reflect the Rater’s involvement with the home at the time the final rating is issued).

For the purposes of completing this Disclosure, “Rater’s employer” is defined as including any

affiliate entities.

Disclosures:

1 Check this selection if you (the Rater) or your employer is receiving a fee for completing the

rating on this home, regardless of whether the fee is paid directly or by a third party (i.e., a utility

program).

2 Check #2 and all that apply under this selection if you or your employer received a fee for

providing design and/or consulting services for this home, or training for the builder or

subcontractors who worked on the home. Specify any other “consulting” services not listed that

may also apply (i.e. services that do not involve the supply or installation of products, as covered

in #4).

3A. Check this selection if you work for a firm that will be the seller of the home (i.e. the

builder/contractor, real estate broker, or real estate agent).

3B. Check this selection if you work for a firm that will provide some portion of financing for the

home (including for upgrade measures and improvements where equipment is financed)

regardless whether it is secured financing or unsecured financing.

3C. Check this selection if you are performing this rating or providing other services for or on

behalf of the electric and/or natural gas utility serving this home, including but not limited to an

investor owned utility or local municipality.

4. Check #4 and all that apply under “installed in this home” if you and/or your employer is

supplying or installing products in this home. Check all that apply under “is in the

business of” if you or your employer is in the business of supplying or installing products

in homes in the general marketplace, but not for the home covered by this disclosure.

Specify any other product category not listed which may also apply.

5. Check # 5 if performing this verification under Chapter 6 of the HERS Standards.

**Exhibit D**

 **Insurance Requirements**

RESIDENTIAL NEW CONSTRUCTION INCENTIVE PROGRAM

RATER PARTICIPATION AGREEMENT

**Insurance:** Rater shall purchase and maintain, at its sole expense, with insurance carriers acceptable to Company, at the minimum coverage, prior to commencement of any Work, and during the remainder of the term of the Agreement, and thereafter, as provided herein. In the event Rater fails to provide a copy of any form, or fails to acquire or maintain the minimum levels of insurance set forth below, Company, at its sole discretion and election, may terminate this Agreement and shall retain all remedies hereunder for the breach of this Agreement, including the purchase of required insurance and charge Rater for such coverage. Company shall have the right to offset the costs of any such insurance, including but not limited to premiums, against any sums payable to Rater under this Agreement. In the event that there are not sufficient funds owing to the Company under this Agreement, then interest shall accrue on the aggregate balance owed at the rate of eighteen percent (18%) per annum until Company is fully reimbursed for all such amounts.

**Evidence of Insurance:** Prior to commencement of Services, as requested from time to time, and 30 days prior to the expiration of any coverage, Rater is to furnish Company with certificates of insurance, in a form acceptable to Company, evidencing the required insurance coverage. Failure of Company to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Company to identify a deficiency from evidence that is provided shall not be construed as a waiver of Rater’s obligation to maintain such insurance. Rater shall provide certified copies of all insurance policies as reasonably required within 10 days of Company’s written request for said copies.

**Minimum Coverage and Limits**

**Workers’ Compensation:**

Workers' compensation insurance as specified by state law in each state where work is to be performed; when workers' compensation is required, Contractor shall also provide employer's liability insurance in the minimum amount of $500,000 each accident and $500,000 per employee for bodily injury by disease with a disease policy aggregate of $1,000,000, or employer's liability insurance plus additional excess umbrella liability insurance to meet these limits.

**Commercial General Liability and Umbrella Liability:**

Commercial general liability insurance or comprehensive general liability insurance with a minimum limit that meets or exceeds the minimum requirements for RESNET certification, but not less than $1,000,000 per occurrence for bodily injury and damage to property including contractual liability, premises/operations, products/completed operations, independent contractors, broad form property damage, and personal injury coverage and a minimum aggregate amount of $1,000,000 or commercial/comprehensive general liability insurance plus additional excess umbrella liability insurance to meet these limits.

**Commercial Automobile Liability:**

Comprehensive automobile liability insurance with a mini­mum combined single limit of $1,000,000 per accident for bodily injury and damage to property, or covering bodily injuries or death in a sum not less than $500,000 per person and $1,000,000 per accident and covering damages to property in a sum of at least $250,000 per accident or comprehensive automobile liability insurance plus additional excess umbrella liability insurance to meet these limits. This insurance shall apply to any auto, whether owned or non-owned.

**Additional Insured:**

Company shall be included as an additional insured under Rater’s CGL, commercial automobile liability and commercial umbrella coverage, if any, by endorsement in a form acceptable to the Company.

**Primary / Non-Contributory Insurance**:

Rater’s insurance that provides Company additional insured status, as described above, shall be endorsed, in a form acceptable to Company, stating that insurance afforded to Company as additional insured under the Rater’s policy shall apply as primary insurance with respect to any other insurance, self-insurance, or large/matching deductible programs afforded to Company.

**Waiver of Subrogation**:

Rater waives all rights against Company and its agents, shareholders, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability, commercial automobile liability, workers compensation and employers’ liability or commercial umbrella liability insurance maintained pursuant to this Agreement and all such policies are to be endorsed, in a form acceptable to Company, providing such waiver of subrogation in favor of Company.

**Miscellaneous**:

Company reserves its rights to require (1) higher limits and (2) additional coverage if the Rater reasonably determines that such higher limits and/or additional coverage is required for the protection of Company. Such additional coverage shall be in a form and with limits of liability, additional insured endorsements, and deductibles or self-insured retentions reasonably acceptable to Company.