

# CSIRO Verification Services – ActivFire® Scheme

## TERMS OF SERVICE FOR FOREIGN (INTERNATIONAL) CLIENTS/CUSTOMERS:

### 1 Definitions

**'Agreement'** means these Terms of Service together with Schedules 1 and 2.

**'Certification Trade Mark'** or **'CTM'** has the meaning given in Schedule 2.

**'Confidential Information'** means Confidential Information (in any form) that CSIRO discloses to you or you disclose to CSIRO. Information is not confidential if it is: (i) publicly available, (ii) rightfully known by CSIRO before disclosure by you or rightfully known by you before disclosure by CSIRO, or (iii) independently created by CSIRO or by you without access to each other's Confidential Information.

**'CTM Licence Agreement'** means the licence agreement attached as Schedule 2 to this Agreement.

**'CSIRO'** means the Commonwealth Scientific and Industrial Research Organisation ABN 41 687 119 230, having its principal office at Limestone Avenue, Campbell, ACT.

**'CSIRO Names'** means the name of CSIRO, or any acronyms or abbreviation of that name and registered or unregistered trademarks, including but not limited to devices of CSIRO, all excluding the Program Names and the CTM.

**'Deliverables'** means one or more of the deliverables corresponding to the Services provided to you, as determined from your request and the Schedule of Services and Fees.

**'Dispute'** means a dispute between you and CSIRO in relation to this Agreement and excludes any dispute in relation to the operation, application or management of the Program which must be resolved in accordance with the Program Rules.

**'IP'** means any rights in any copyright work (including any work or item created in the future), invention (whether or not patent protection has been sought), design, circuit layout, new plant variety, trademark, know-how or trade secret.

**'Program Names'** means the name of the Program, or any acronyms or abbreviation of that name and registered or unregistered trademarks of CSIRO relating to the Program, as listed in the Program Rules.

**'Program'** means the ActivFire Scheme operating as a CSIRO Verification Services program and subject to the Program Rules of the ActivFire Scheme.

**'Program Rules'** means the rules and procedures governing the operation of the Program as published on its web site. The Program Rules may be varied from time to time. You will be notified when updated Program Rules have been published at the **Program** web site.

**'Request'** means a written request for Services, pursuant to clause 2.1, from the Client Contact as nominated by this Agreement or an alternative contact as nominated by you.

**'Schedule of Services and Fees'** means Schedule 1 to this Agreement and is based on AF-D003: CSIRO Verification Services - ActivFire Scheme - Schedule of Services and Fees. AF-D003 may be extended or amended from time to time. You will be notified when an updated AF-0003 has been published at the Program web site

**'Services'** means one or more of the services set out in the Schedule of Services and Fees and/or as requested by you and which CSIRO agrees to provide pursuant to clause 2.1.

**'Turnaround Time'** an estimated period of time, required to deliver the scope of Services, as determined from your Request and the Schedule of Services and Fees which will be notified to you by CSIRO following receipt of the Request.

**'we', 'us' or 'our'** means the Client and CSIRO severally.

**'you' or 'your'** means the Client identified on the document that confirms acceptance of CSIRO's offer pursuant to clause 2.1.

### 2 Supply of Services

**2.1** If you require Services under the terms of this Agreement, you will direct your Request to the CSIRO Project Coordinator nominated as either ActivFire Scheme Executive Officer or an alternative officer as nominated by CSIRO. CSIRO will advise you whether it will perform the Services, the scope of Services as determined from your Request, the Deliverables, the Fee or estimated Fee and estimated Turnaround Time and its dependencies. You must confirm your acceptance of CSIRO's offer in writing.

**2.2** Upon your acceptance of CSIRO's offer, pursuant to clause 2.1, you will, if you have not already done so, provide relevant evidence in a form and extent sufficient to indicate that you meet the relevant requirements of the Program and the Program Rules.

**2.3** You warrant that all information provided by you to CSIRO is accurate and in no way misleading.

- 2.4** You must ensure that any Materials you provide to CSIRO are: (i) suitably packaged; (ii) labelled with your name and contact details, the contents and the name of the CSIRO Project Coordinator; and (iii) labelled with appropriate safety warnings or instructions for their handling, testing, storage, transportation and disposal. You must also advise CSIRO of any hazardous or otherwise dangerous components or properties of the Material. You must also advise CSIRO of any hazardous or otherwise dangerous components or properties of the packages you send to CSIRO. You agree to pay CSIRO's costs of returning or disposing of articles, documents or materials you provide.
- 2.5** If you do not comply with the above and CSIRO has to take measures to safeguard the health and safety of CSIRO staff, CSIRO laboratories or the public, then CSIRO will charge you for the cost of taking these measures.
- 2.6** This Agreement does not provide for the delivery of Evaluation for Conformity (testing or technical verification) services. Such services shall be sourced from recognised agencies (e.g. laboratories) ratified, under the recognition framework of the Program, as having the appropriate expertise and facilities for testing, assessment and technical verification, under separate business arrangements, between you and the recognised agencies.
- 2.7** CSIRO will keep copies of all documents you provide to CSIRO and may reproduce and use such documents for its own record keeping purposes.
- 2.8** You agree to comply with the Program Rules and that your entitlement to the Deliverables is subject to your ongoing eligibility under the Program Rules.
- 2.9** The knowledge, skills, experience and IP that CSIRO officers will use to perform the Services have been developed in the course of providing the same or similar services to other clients. CSIRO may develop further knowledge, skills, experience and IP while performing the Services. CSIRO will own IP developed in the course of providing the Services. CSIRO can use such knowledge, skills, experience and IP to provide Services to other clients.

### **3 Deliverables**

- 3.1** CSIRO will provide you the applicable Deliverables if:
- (a) CSIRO is satisfied that you have met all the eligibility criteria specified in the Program Rules;
  - (b) you are not in breach of this Agreement, the CTM Licence Agreement (if any), or the Program Rules; and
  - (c) you have paid the applicable Fee in accordance with the terms of this Agreement.

- 3.2** In accordance with the requirements of the Program, you agree for CSIRO to publish and promulgate your contact details and;
- (a) details of the particular products associated with your business that have been certified; or
  - (b) details of the particular services associated with your business that have been accredited.
- 3.3** CSIRO will advise you if you are not entitled to the Deliverables under the Program Rules.
- 3.4** Your entitlement to the Deliverables ends on the earlier of:
- (a) the expiry date specified for the Deliverables;
  - (b) the suspension or withdrawal of the Deliverables; or
  - (c) termination of this Agreement.
- 3.5** CSIRO may suspend or withdraw Deliverables (including any listing on the Program web site) in accordance with the Program Rules.

### **4 Payment**

- 4.1** You must pay CSIRO the applicable Fee and any Additional Expenses as agreed and confirmed pursuant to clause 2.1.
- 4.2** If your business is registered in Australia then Goods and Services Tax (GST) will be added to the Fee when the tax invoice is issued. GST is not applicable to businesses not registered in Australia.
- 4.3** All invoices issued by CSIRO must be paid within 30 days after the invoice date. If an invoice is not paid on time then you must pay interest on the outstanding amount. Interest is calculated daily at the Westpac Bank Reference Lending Rate plus 2% per annum from the due date until the date the outstanding amount is paid.
- 4.4** If you do not pay on time then CSIRO may:
- (a) suspend the provision of the Services;
  - (b) refuse to provide any further Services until the Fee is paid in full including any outstanding interest; and/or
  - (c) withdraw or refuse to provide any Deliverables.
- 4.5** The Fee does not include freight, packing and transit insurance charges. If CSIRO has to pay any such charges, then you will be invoiced separately and must reimburse CSIRO for these charges.
- 4.6** All international conventions that might import contractual terms into this Agreement are excluded, including the United Nations Convention on Contracts for the International Sale of Goods.
- 4.7** You are responsible for obtaining any necessary import licences or permits and for paying any customs or import duties or taxes on such importation.
- 4.8** Goods and services supplied to Australian residents or for use in Australia are subject to tax under the GST law. Goods or services supplied to you under this Agreement will be treated as GST-free supplies under the GST law in reliance on your assurances that:

- (a) you are a non-resident for Australian income tax purposes;
- (b) you are not registered or required to be registered for GST purposes in Australia; and
- (c) you require the goods and services solely for use in your business or operations outside of Australia.

**4.9** If goods or services supplied to you are subsequently classified as taxable because any of your assurances are incorrect, you must reimburse CSIRO on demand for the GST payable (including any interest, fine, penalty or other amount imposed upon CSIRO for failing to collect the GST).

**4.10** The Fee must be paid to CSIRO in full, without any deduction, withholding, set-off or counterclaim for taxes, excises or duties. If any taxes, excises or duties are imposed then: (i) you will bear and pay all deductions and withholdings of any taxes, excises or duties directly to the relevant authorities; and (ii) separately pay CSIRO enough to ensure that CSIRO receives the full amount of the Fee on the due date.

## **5 Your Use of Deliverables**

**5.1** You use the Deliverables at your own risk. You must not use the Deliverables:

- (a) in a misleading or deceptive manner;
- (b) so as to suggest the following as determined by the Program:
  - i) that the services associated with your business, that are accredited, are different to those registered and validated under the Program; or
  - ii) that the products associated with your business, that are certified, are different to those registered and validated under the Program.
- (c) so as to suggest that CSIRO endorses your business;
- (d) once your Deliverables have been suspended, or withdrawn; or
- (e) in connection with any dispute resolution, capital raising, prospectus, information memorandum or advertising other than as specifically provided for under this Agreement, the Program Rules and/or the CTM Licence (if any).

**5.2** At all times, the Deliverables (and the IP therein) remain the property of CSIRO.

**5.3** You must notify CSIRO if any detail contained in a Deliverables is incorrect or if there is a change to any of your details as published by the Program as a document, web site content or other form of media.

**5.4** CSIRO is not responsible for the consequences of any third party using or relying on the Deliverables.

## **6 Confidential Information**

**6.1** Confidential Information must be kept confidential for a period of 5 years commencing on the date you confirm acceptance of CSIRO's offer pursuant to clause 2.1..

**6.2** We may each disclose the other's Confidential Information if required by law, but only to the extent of that legal requirement and after appropriate action is taken to protect the form and content of the disclosure.

## **7 Limitation of Liability**

**7.1** All terms, conditions and warranties (including any warranty as to merchantable quality or fitness for purpose) implied by common law or statute (implied warranties) as to the manner, quality and timing of the Services or the Goods are excluded unless the exclusion of any such implied warranties would contravene the law or cause any part of this Agreement to be void.

**7.2** CSIRO's liability to you for breach of any term of the Agreement or of any non-excludable consumer warranties is limited, at CSIRO's option, to resupplying the Deliverables or re-performing the Services, or the costs of resupplying the relevant Deliverables or performing the affected part of the Services again.

**7.3** CSIRO will not be liable to you for any loss of data, information, revenue, profit or business opportunity or for any damage to goodwill or reputation which is suffered by you in any way arising from the Services or your use of the Deliverables.

**7.4** You release CSIRO from and indemnify CSIRO against all losses, damages, costs and expenses (including legal costs on a solicitor and own client basis) that CSIRO may sustain or incur directly or indirectly as a result of any claim, demand, action or proceeding (including where brought by a third party) arising out of:

- (a) any breach of this Agreement or any CTM Licence Agreement, or the Program Rules;
- (b) any negligent or unlawful acts or omissions by you (including your employees, officers, agents and contractors);
- (c) Your use of the Deliverables or your marketing and sale of services and/or products associated with your business;
- (d) the exercise by you of your rights under the CTM Licence Agreement.

**7.5** CSIRO will not rely on this release or indemnity to the extent that the indemnified liability is caused by any breach, or negligent or unlawful act or omission, of CSIRO or its officers, employees or agents.

## **8 Dispute Resolution**

**8.1** Any dispute, controversy or claim arising out of or relating to this Agreement or its breach, termination or invalidity ('Dispute') must be dealt with in accordance with this clause.

**8.2** If a Dispute is not settled within 30 days of receipt of written notice of the Dispute, the Dispute will be settled by arbitration in accordance with the UNCITRAL Arbitration Rules. The appointing authority will be the Australian Centre for International Commercial Arbitration. There is to be a single arbitrator. The place of arbitration is to be Melbourne, Victoria, Australia. The language of the arbitration is to be English.

**8.3** Any arbitration is to be final and binding, including any award as to costs. Offers of settlement or any matter disclosed in the course of arbitration must be treated as without prejudice and not an admission of liability. The arbitration and the decision of the arbitral tribunal will be confidential.

**8.4** Nothing in this clause will prevent either CSIRO or you from seeking urgent interlocutory relief.

## **9 Termination**

**9.1** This Agreement ends on the Expiry Date.

**9.2** CSIRO may terminate this Agreement immediately by giving you a written notice if:

- (a) You breach this Agreement or any CTM Licence Agreement and you do not remedy that breach within 30 days after written notice to do so is received; or
- (b) You become insolvent, bankrupt or otherwise unable to pay your debts as and when due.

**9.3** On termination of this Agreement:

- (a) You are required to promptly pay CSIRO any outstanding payments due to CSIRO at the date of termination;
- (b) You must immediately cease using the Deliverables, Program Names and CTM (if licensed); and
- (c) You must return all CSIRO Confidential Information provided to you by CSIRO no later than fourteen days after receiving the request from CSIRO, save that you may retain one archive copy of each document containing CSIRO Confidential Information for the sole purpose of enabling you to determine the scope of your legal obligations under this Agreement.

**9.4** Notwithstanding clause 6 above, where this Agreement and/ or CTM Licence Agreement is terminated as a consequence of a defect or deficiency in your products or services which CSIRO considers may give rise to a risk to health, safety or the environment, or which may lead to property damage or deterioration, you must take appropriate corrective action as determined by CSIRO and notified to you and you authorise CSIRO to disclose relevant information to any relevant authority having jurisdiction.

## **10 Use of Names and Trade Marks**

**10.1** Where CSIRO permits you to use the Program Names in relation to services or products associated with your business, you must comply with the

Program Rules and any other directions notified by CSIRO to you from time to time pertaining to the use of the Program Names.

**10.2** You must not use CSIRO Names in association with your business or services associated with your business, or on your websites, advertising and marketing literature.

## **11 General**

**11.1** This Agreement records our entire agreement and supersedes all earlier agreements and representations that may have been made by CSIRO to you about the Services. In the event of any ambiguity or inconsistency between the Agreement and the Program Rules, the provisions of this Agreement will prevail.

**11.2** The terms in this Agreement override any contrary terms contained in any invoice, purchase order or other documentation issued by you to CSIRO for the Services.

**11.3** This Agreement is governed by the law applicable to the State or Territory identified by the CSIRO address given in the document that confirms your acceptance of CSIRO's offer.

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

# Schedule 1: ActivFire Scheme – Schedule of Services and Fees

## CSIRO VERIFICATION SERVICES - ACTIVFIRE® SCHEME SCHEDULE OF SERVICES AND FEES

All Services are provided for the purposes of the CSIRO Verification Services Program, designated as the ActivFire® Scheme, and are subject to the Program Rules and payment of applicable Fees. Details of the Program and Program Rules are available at <https://www.activfire.gov.au/>. The Program Rules and/or Fees may be changed from time to time and changes will be published on the Program web site.

Item	Service description	Num. of products or listing entries	Is evaluation for conformity required? <sup>1</sup>	Fee <sup>2, 3</sup>	Deliverable <sup>4</sup>
1	Verifying your Attestation of Conformity in relation to a request for listing a new Product on the Program web site by an <u>existing Registrant</u> .	1	Yes	\$920	Listing of Product on the Register of Fire Protection Equipment.
			No	\$575	
> 1			Yes	POA	
			No		
2	Verifying your Attestation of Conformity in relation to a request for listing a new Product on the Program web site by a <u>new applicant to become a Registrant</u> .	1	Yes	\$1954	
			No	\$1379	
>1			Yes	POA	
			No		
3	Project services associated with verifying your Attestation of Conformity of modifications or variations to a Product which is an <u>existing listing</u> on the Register of Fire Protection Equipment.	1	Yes	\$805	Updated listing of Product on the Register of Fire Protection Equipment
			No	\$345	
>1			Yes	POA	
			No		
4	Assessing request for, and preparation of, variation to an existing listing on the Register of Fire Protection Equipment or associated content (including Certificate of Conformity) on the Program web site.			\$230/hr	
5	Specialist advice in relation to establishing and validating conformity requirements for complex products or projects.			\$290/hr	Contribution to discussions/meetings and document responses, including email messages, for the purposes of establishing or validating the scope and planning of conformity evaluation (testing), verification.
6	Assessment of application for listing as a Recognised Conformity Evaluation Agency.			\$1035	Registration of Recognised Conformity Evaluation Agency and letter of confirmation to applicant.
7	Annual re-validation and listing of existing product entries on the Register of Fire Protection Equipment.	Ref.: Revalidation and Listing Service (RLS) fee table and formula (below)			Update of revalidated listing of Products on the Register of Fire Protection Equipment.

### Revalidation and Listing Service (RLS) fee table

Number range bracket of product listing entries in the Register of Fire Protection Equipment	Bracket lower limit	Bracket upper limit	Bracket Re-validation and Listing Service (RLS) fee <sup>2</sup>	Fee <sup>3</sup> per entry within the Bracket limits
Bracket A	1 entry	10 entries	\$1,210.00	\$121.00
Bracket B	11 entries	50 entries	\$2,420.00	\$24.20
Bracket C	51 entries	1000 entries	\$3,368.00	\$12.10

### Revalidation and Listing Service (RLS) fee formula

$$= \text{RLS fee} + (\text{Number of product entries within bracket}) \times (\text{Cost per product entry within bracket})$$

- Evaluation for Conformity, as required, shall be carried out by a Recognised Conformity Evaluation Agency. Costs associated with Evaluations for Conformity are not included in the Program Fees and are subject to a separate agreement between you and the Recognised Conformity Evaluation Agency.
- Fees indicated above do not include Australian Goods and Services Tax (GST). GST is applicable in accordance with Australian statutory requirements.
- All Fees are subject to review from time to time and will be confirmed upon request at the time you request the Services. Any changes to fees will be published on the Program web site.
- If your Attestation of Conformity does not meet the requirements for verification under the Program Rules, you will not be entitled to have the Product listed in the Register of Fire Protection Equipment. In such cases the Fees remain payable and the Deliverable will be notification to you that the Attestation of Conformity could not be verified.

## Schedule 2: CTM Licence Agreement – ActivFire Scheme

**Commonwealth Scientific and Industrial Research Organisation** (ABN 41 687 119 230) a body corporate established pursuant to the provisions of the *Science and Industry Research Act 1949* (Commonwealth) and having its principal office at Clunies Ross Street, Black Mountain, Australian Capital Territory, Australia, through its Infrastructure Technologies Group, Clayton Vic 3168 (**CSIRO**)

And

**You**

**IT IS AGREED** as follows.

### 1.1 Definitions

**'Certification Trade Mark' or 'CTM'** means the ActivFire trade mark registration number 1389683.

**'CTM Licence Agreement'** means this agreement, including its schedules.

**'Certificate'** means either of the following as determined by the Program;

- a. a document issued by CSIRO in relation to particular services associated with your business verified as meeting the requirements of the Program and for which the your attestation of conformity has been validated; or
- b. a document issued by CSIRO in relation to particular products associated with your business verified as meeting the requirements of the Program and for which the your attestation of conformity has been validated.

**'Verification Services Agreement'** means the Terms of Service to which this schedule is attached and its terms pursuant to which you procured Services in relation to the either of the following, as determined by the Program;

- a. certification of products associated with your business; or
- b. accreditation of services associated with your business.

**'Term'** means the period commencing on the date a Certificate is registered or subsequently revalidated to you and ending on the valid until date specified on the Certificate or the Program Rules, unless earlier withdrawn, suspended or cancelled pursuant to this CTM Licence Agreement, the Program Rules or the Verification Services Agreement.

**'Territory'** means Australia.

**'Usage Requirements'** means the requirements and limitations relating to the use of the CTM including the following requirements:

- a. Each and every use of the CTM must clearly identify the particular services associated with your business in relation to which this CTM Licence Agreement is executed, in a manner and to the extent necessary, to differentiate those of your services that have been accredited from other services that may be provided by your business; or
- b. Each and every use of the CTM must clearly identify the particular products associated with your business in relation to which this CTM Licence Agreement is executed; in a manner and to the extent necessary, to differentiate those of your products that have been Certified from other products that may be provided by your business; and
- c. Requirements prescribed under the Program Rules and as notified to you by CSIRO from time to time. Other capitalised terms have the meaning given in the Verification Services Agreement.

## 1.2 Licence to use Certification Trade Mark

- a. You agree that the terms and conditions of this CTM Licence Agreement govern the use of the CTM.
- b. This CTM Licence Agreement is not intended to vary or replace the Verification Services Agreement or the Program Rules, however to the extent of any inconsistency between the terms of the CTM Licence Agreement, the Verification Services Agreement or the Program Rules, precedence will be given as follows:
  - i) CTM Licence Agreement;
  - ii) Verification Services Agreement;
  - iii) Program Rules.
- c. CSIRO grants to you a non-exclusive, non-assignable, non-transferable and non-sub-licensable licence to use the CTM for the Permitted Uses in Australia for the Term.

## 1.3 Permitted Uses

- a. You agree that you will only use the CTM:
  - i) Subject to the Verification Services Agreement and the Program Rules;
  - ii) In accordance with the Usage Requirements; and
  - iii) In a way which clearly identifies either of the following as determined by the Program;
    - the particular services associated with your business that have been accredited and enables them to be distinguished from other services that may be provided by your business; or.
    - the particular products associated with your business that have been Certified and enables them to be distinguished from other products that may be provided by your business.
- b. You must not use the CTM:
  - i) On any test reports or other certificates relating to conformance of products or services with applicable standards other than the those products or services that are registered and validated under the Program;
  - ii) On, or otherwise so as to suggest that, services associated with your business which are not accredited have been certified as accredited;
  - iii) So as to suggest that CSIRO endorses business or the services associated with your business that have been accredited; or
  - iv) On, or otherwise so as to suggest that, products associated with your business which are not Certified as Certified;
  - v) So as to suggest that CSIRO endorses your business or the products associated with your business that have been Certified; or
  - vi) In connection with any comparative advertising, dispute resolution, capital raising, prospectus or information memorandum.
- c. You must not register or attempt to register the CTM or any similar mark inside or outside the Territory, as a trade mark, business or company name, or domain name.
- d. At the request of CSIRO, you must allow CSIRO to have reasonable access to your premises to verify that the CTM is being used in accordance with this CTM Licence Agreement.

## 1.4 No Use of CSIRO Names

With the exception of uses of the CTM permitted under this CTM Licence Agreement, you must not use CSIRO Names in connection with your products and/or services.

## 1.5 Goodwill

- a. You agree that all goodwill generated or arising through your use of the CTM inures absolutely to CSIRO's benefit.
- b. You must not use or register any trade mark, business or company name or domain name inside or outside the Territory which is similar to or incorporates the CTM or CSIRO Names.

## 1.6 No Challenge

You agree that during and after the expiry of the Term, you will not, directly or indirectly, challenge or assist a third party to oppose, challenge or seek re-examination or revocation the CTM from any official register.

## **1.7 Limited warranty**

CSIRO warrants that it has not received any communication alleging that the CTM infringes a third party's intellectual property marks, provided however that CSIRO makes no other representations or warranties, express or implied, regarding the CTM, and expressly excludes any representation or warranty that the CTM will not infringe any third party's intellectual property rights. Where the CTM is only filed as an application, CSIRO does not warrant that the application will be granted, or that any granted CTM will not be revoked or cancelled under the Trade Marks Act 1995.

## **1.8 Release and Indemnity**

For clarity sake, the release and indemnity provisions of the Verification Services Agreement apply to this CTM Licence Agreement.

## **2 TERMINATION**

### **2.1 Termination by CSIRO**

CSIRO may, at its election, immediately suspend or terminate this CTM Licence Agreement and the licence granted under it by notice in writing to you if any one of the following occurs:

- a. You breach this CTM Licence Agreement or the Verification Services Agreement or the Program Rules;
- b. Your entitlement to the Certificate ends pursuant to this CTM Licence Agreement or the Verification Services Agreement;
- c. You become insolvent, bankrupt or otherwise unable to pay your debts as and when due;
- d. The Verification Services Agreement is terminated or expires;
- e. CSIRO ceases to operate the Program; or
- f. The CTM is revoked, cancelled or abandoned for any reason.

### **2.2 Termination by you**

You may terminate this CTM Licence Agreement by written notice to CSIRO if:

- a. CSIRO breaches this CTM Licence Agreement and does not remedy that breach within 30 days after written notice to do so is received;
- b. the Verification Services Agreement is terminated or expires;
- c. CSIRO ceases to operate the Program; or
- d. the CTM is revoked, cancelled or abandoned for any reason.

### **2.3 Consequences of termination**

On termination of this CTM Licence Agreement, and on direction from CSIRO, you must immediately cease using the CTM and not sell or distribute any products bearing the CTM, or in any way representing that your products or services are the subject of a Certificate.

## **3 DISPUTES**

### **3.1 Dispute resolution**

If there is a Dispute between you and CSIRO that cannot be resolved then the matter must be referred to the Australian Commercial Disputes Centre for arbitration in accordance with the Centre's Guidelines and Rules for Arbitration.

Arbitration will occur in Melbourne, Australia. The decision of the single arbitrator (including any award as to costs) will be final and binding.

## **4 GENERAL**

### **4.1 Notices**

Notices under this CTM Licence Agreement must be given by registered mail, by delivery or by facsimile transmission or by email notification at the applicable address stated on the Verification Services Agreement.

### **4.2 Assignment**

You may not assign, novate, charge, transfer, encumber, sublicense or otherwise deal with any of rights or obligations under this CTM Licence Agreement without the prior written consent of CSIRO.



#### **4.3 Amendment**

This CTM Licence Agreement or a right created under it may only be amended, supplemented, replaced, novated, waived or varied by another written agreement executed by all parties.

#### **4.4 No waiver**

No failure to exercise and no delay in exercising any right, power or remedy under this CTM Licence Agreement will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

#### **4.5 Severance**

- a. Any provision of this CTM Licence Agreement which is prohibited or unenforceable in any jurisdiction will be severed to the extent necessary to make the CTM Licence Agreement valid and enforceable. The severance of a provision will not invalidate the remaining provisions of this CTM Licence Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.
- b. If a provision is severed that would materially change the substance of the CTM Licence Agreement then the parties must negotiate in good faith to seek agreement on a replacement provision:
  - i) that is valid and enforceable; and
  - ii) as far as possible, will give effect to the intention of the parties as expressed in this CTM Licence Agreement at the date of execution.

#### **4.6 Governing law**

This Agreement is governed by the law applicable to the State or Territory given in the CSIRO address specified at the top left corner of the cover page of your Verification Services Agreement.