



8 May 2023

Tēnā koe,

Re: Official Information Act (OIA) Request – environmental certification

I am writing in response to your email dated 3 April 2023 in which you requested the following information:

- *How many years has your museum been affiliated with Toitū?*
- *How much does it cost your museum to maintain certification, including fees from Toitū and costs related to meeting these requirements?*
- *If different, what were the initial up-front costs to achieve compliance with certification standards and achieve certification in the first place?*
- *Does the museum plan to achieve Carbon Positive certification, and if so, why, and under what timeframe? If not, why?*
- *Has the museum considered other certification/auditors, or in-house auditing of their climate emissions as an alternative to Toitū?*

In addition, on 4 April 2023 you requested the following information:

- *Please provide copy of any contracts signed, any other applicable conditions or criteria your museum must abide by as part of accreditation.*

Responses to your questions are provided below. A copy of the contract is attached with some redactions in accordance with s9(2)(a) of the OIA.

How many years has your museum been affiliated with Toitū?

Five years.

How much does it cost your museum to maintain certification, including fees from Toitū and costs related to meeting these requirements?

\$12,705 per annum.

If different, what were the initial up-front costs to achieve compliance with certification standards and achieve certification in the first place?

Initial costs were \$9,200.

Does the museum plan to achieve Carbon Positive certification, and if so, why, and under what timeframe? If not, why?

Te Papa is not seeking to achieve Carbon Positive Certification at this time but is continuing to seek opportunities to reduce our carbon footprint.

Has the museum considered other certification/auditors, or in-house auditing of their climate emissions as an alternative to Toitū?

No.

If you are not satisfied with this response you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

If you wish to discuss any aspect of your request please contact me at OIA@tepapa.govt.nz.

Yours sincerely

A handwritten signature in black ink, appearing to be 'FL' or similar initials, written in a cursive style.

Frances Lawrence
Principal Advisor Strategy, Planning and Performance



Proposal and Contract

for Museum of New Zealand
Te Papa Tongarewa
for CEMARS® Certification

15 November 2017



WWW.JAS-ANZ.ORG/REGISTER



Landcare Research
Manaaki Whenua

David Robinson
Chief Operating Officer
Museum of New Zealand Te Papa Tongarewa
P O Box 467
Wellington 6140
New Zealand

15 November 2017

Dear David,

Thank you for your interest in gaining CEMARS® certification. Participation in the programme demonstrates a real commitment to the environment and your business's sustainability.

Our internationally recognised programme means that the Museum of New Zealand Te Papa Tongarewa can be assured that your greenhouse gas emissions claims are credible and robust. The programme acknowledges the actions of organisations that measure their greenhouse gas (GHG) emissions, understand their carbon liabilities, and put in place management plans to reduce emissions in their organisation and more widely through their supply chain. This leads to maximised energy efficiency, reduced operational costs and identification of new routes to market.

The methodology for our programmes is accredited by JAS-ANZ (Joint Accreditation System of Australia and New Zealand) to meet the requirements of ISO 14065:2007. This provides assurance that your certification meets international best practice. Consequently, you can confidently demonstrate your sustainability credentials in your marketing proposition to your customers, suppliers and stakeholders.

Please find attached our proposal incorporated into an Agreement. Once you have had an opportunity to review the proposal I will touch base so we can discuss it in further detail. The proposed fees remain valid for 30 business days from the date of this letter.

I look forward to working with you on this exciting opportunity and am confident that becoming certified in our CEMARS programme will add real benefits to your business as well as creating competitive advantage.

Yours sincerely,



████████████████████
New Zealand Sales Manager
Enviro-Mark Solutions Limited
████████████████████
████████████████████

Contract Cover Sheet

Parties

Museum of New Zealand Te Papa Tongarewa, whose principal office is 55 Cable Street, Te Aro, Wellington 6011, New Zealand ("You", "Your");

and

Enviro-Mark Solutions Limited, a company incorporated in New Zealand whose registered company number is 3166945 and whose principal office is at 20 Augustus Terrace, Parnell, Auckland 1052, New Zealand ("We", "Us", "Our")

- a) We operate various environmental certification programmes and provide technical services, training and tools to assist Our clients to create a tailored environmental performance improvement strategy.
- b) We have agreed to provide You with the Services in accordance with this Contract Cover Sheet, the attached Services Schedule and Appendix of Terms. We recognise that You are unique and have particular business needs. As such, the Services Schedule reflects the terms that are relevant to You and Your Services.
- c) This Contract Cover Sheet, together with the Services Schedule and Appendix of Terms, form "this Agreement" which governs Our provision of the Services to You.


Parties Contact Details

	Your details	Our details
Postal Address:	P O Box 467, Wellington 6140, New Zealand	PO Box 137 182, Parnell, Auckland 1052, New Zealand
Phone:	+64 4 381 7117	[REDACTED]
E-mail:	david.robinson@tepapa.govt.nz	[REDACTED]

EXECUTION

Signed for and on behalf of
Museum of New Zealand Te Papa Tongarewa

Signed for and on behalf of
Enviro-Mark Solutions Limited


 Name: P. J. CUNNINGHAM


 [REDACTED]

Position: HEAD OF PROPERTY AND FACILITIES

New Zealand Sales Manager

Date: 14 NOVEMBER 2017

18 October 2017

Purchase Order Number:

Services Schedule

THIS SERVICES SCHEDULE

We are pleased to provide the following environmental services to You in accordance with the provisions outlined in this Services Schedule and in the Appendix of Terms below. This Services Schedule, together with the Contract Cover Sheet and the Appendix of Terms, form “this Agreement” which governs Our provision of the Services to You.

All capitalised words used in this Services Schedule that have not been defined below have the meaning given to them in the Contract Cover Sheet or the Appendix of Terms.

Environmental Certification Programme Membership

This part of the Schedule outlines the membership package We have agreed to provide to You, Your requirements and the Fees You have agreed to pay for those Services.

1. YOUR MEMBERSHIP PACKAGE

- 1.1 You aim to achieve CEMARS® (“Programme”) Certification as a “certified organisation” under the Programme.
- 1.2 We will provide the Services set out below to help You continue Certification under the Programme.

Package	Services
Environmental Certification: CEMARS Package	<p>Carbon Measurement and Reduction Services</p> <ul style="list-style-type: none"> ▪ Access to the Software for 2 users to carry out Your emissions calculations ▪ Tools and Materials in the Software including emissions factors ▪ Guidance materials, templates and product specifications (if applicable) ▪ Access to Our Website and password-protected resources ▪ Helpdesk Support <p>Account Management Support and Training</p> <ul style="list-style-type: none"> ▪ Technical Account Management Support (up to 12 support hours) ▪ Introduction to the Programme rules and resources ▪ Tailored Project Plan for You ▪ Training and support on the environmental measurements You are undertaking including boundary setting, data collection, data quality, training on calculation tools (where applicable) ▪ Training and support on management and reduction opportunities ▪ Audit Preparation <p>Audit and Certification Services</p> <ul style="list-style-type: none"> ▪ Verification audit of Your compliance with the CEMARS Programme ▪ Technical review and Certification under the CEMARS Programme <p>Marketing and Branding Services</p> <ul style="list-style-type: none"> ▪ Royalty free use of logo (Mark) on products where Your products are certified by Us ▪ Newsletters ▪ Best practice workshops and networking events ▪ Training of use of Our logos ▪ Programme logo on Your website ▪ Inclusion of Your name, logo and level of certification on Our website ▪ Framed certificate of Your Certification ▪ Review of Your marketing materials and communications

2. YOUR REQUIREMENTS

2.1 You agree that You are aiming to achieve the Certification based on the Verification parameters and assumptions set by You and agreed by Us, which are:

Objective	CEMARS Certification in accordance with ISO 14064-1:2006 (organisation inventory).
Scope	All relevant sources as required by the Programme within the boundary indicated for the operations of the nominated legal entity within New Zealand.
Criteria	Technical Requirements (organisation) version 2.0, Certification Mark Guide version 2.0, ISO 14064-3:2006 (verification).
Consolidation approach	Operational control.
Materiality	Errors, omissions and exclusions when aggregated do not exceed 5% of the total inventory.
Level of Assurance	Reasonable for Scope 1, Scope 2 and mandatory Scope 3 emissions
Service Levels	Support Hours: Up to 12 hours. Estimated Certification Hours: Up to 23 hours (subject to the Appendix of Terms).

2.2 You agree that the Certification claim will be confirmed during the Verification process.

2.3 The Marks cannot be used prior to Certification.

3. THE FEES

3.1 Subject to Part II of the Appendix of Terms, the Fees for the Services are as follows:

(a) **Annual Membership Fee:** \$8,000 per year (based on Your organisational environmental profile and service requirements as advised to Us by You); and

(b) **Annual Certification Fees:**

(i) **Organisation - Annual:** \$4,875 (based on an estimate of 23 hours to complete Your Verification, technical review and Certification, which estimate may be varied by the scope assessment (if any) and completion of the actual Verification).

NB. Organisation is subject to annual surveillance audits.

3.2 These additional Fees may be payable by You:

Verifier disbursement cost: All costs associated with verifier's travel to conduct you site audit.
Non-conformance management fee: Non-conformances that arise from the audit, and require additional time to clear will be charged at \$210 per hour plus GST.
Carbon Credit Fees (assessment/registry/administration): \$950 per project assessment, \$0.35 per credit for registry/administration where client sources credits.
Optional additional Support: \$1,000 per four-hour block

Appendix of Terms

THIS APPENDIX OF TERMS

This Appendix of Terms contains Our Standard Terms (Part I) and any specific terms that govern Our provision of the Services to You (other Parts). This Appendix of Terms, together with the Contract Cover Sheet and the Services Schedule, form “this Agreement” which governs Our provision of the Services to You.

All capitalised words used in the Services Schedule that have not been defined below have the meaning given to them in the Contract Cover Sheet or this Appendix of Terms.

Part I: Standard Terms

THESE TERMS

The terms set out in this Part I of the Appendix of Terms are our Standard Terms that apply to Our provision of the Services to You.

1. OUR AGREEMENT

- 1.1 You have selected Us to provide You with the Services set out in the Services Schedule to help You manage Your environmental performance improvement strategy.
- 1.2 We will provide these Services to You in accordance with this Agreement and You agree to be bound by its provisions.

2. OBLIGATIONS

- 2.1 Our obligation to provide the Services to You commences on the Commencement Date.
- 2.2 We will:
 - (a) perform Our obligations under this Agreement in a timely manner;
 - (b) use reasonable endeavours to perform Our obligations hereunder in accordance with Good Industry Practice;
 - (c) ensure that Our team members are competent and act impartially; and
- 2.3 You will not:
 - (a) make any representation relating to the Services that may deceive or mislead any person as to the nature and / or scope of the Services or any certification of You by Us;
 - (b) make any representation that We endorse You or Your products, services or events, except with Our express written consent;
 - (c) do or omit to do anything which may bring Us or Our Services into disrepute, or otherwise damage Our reputation or the credibility of the Services.
- 2.4 You will notify us in advance if in providing the Services to You any of Our staff or Auditors are required by any law applicable to You, or otherwise by Your internal procedures, to undergo any form of security or ‘fit and proper person’ test, and You shall cover all fees and costs associated with such tests and all reasonable expenses and disbursements that We may incur under this clause.

3. TERM

- 3.1 This Agreement will commence on the Commencement Date and shall continue in force until terminated in accordance with its provisions.

4. FEES AND PAYMENT

- 4.1 The Services Schedule specifies the Fees for the Services We will provide to You.
- 4.2 You agree to pay the Fees and all reasonable disbursements that arise in the provision of the Services within 20 Days of receipt of Our invoice or as otherwise specified in the other parts of the Appendix of Terms to this Agreement.
- 4.3 If You do not pay any amounts payable to Us by the due date for payment, then (without prejudice to any of Our other rights or remedies) You will pay to Us:
- (a) interest at the rate of 15% per annum calculated on a daily basis on the amounts unpaid from the due date for payment until the actual date of payment in full;
 - (b) all of Our costs of collecting the outstanding amounts (including, but not limited to, Our legal costs).
- 4.4 If any payment to Us pursuant to this Agreement is subject to withholding tax, You may deduct and pay such tax provided that You provide Us with an official receipt for such payment to enable Us to claim a credit for such withholding tax.
- 4.5 Unless expressly stated otherwise, all amounts payable under this Agreement are in New Zealand Dollars and exclusive of GST or other value added tax.
- 4.6 We reserve the right to change Our fees from time to time after the first anniversary of the Commencement Date, and We will notify You of such increase 3 months before it becomes effective.

5. INTELLECTUAL PROPERTY, CONFIDENTIALITY AND DATA

- 5.1 Each party will treat as confidential all information disclosed by, or obtained from, the other party whether intentionally or erroneously disclosed or obtained and whether about one of the parties to this contract or a third party. Neither party will:
- (a) divulge such information to any persons (except to their employees (for whom that party will be responsible) and then only to those employees who need to know) without the other party's written prior consent; or
 - (b) use such information for any purpose other than the performance of its obligations under this Agreement.
- 5.2 Without limiting the foregoing, You shall not provide to third parties copies of this Agreement, any information or data contained in any software You may be granted access to under this Agreement, the Created Materials or any other information provided to You by Us in Our provision of the Services (whether in any document, electronic file or in any software You may be granted access to under this Agreement) or otherwise obtained by You as part of using the Services, except with Our express prior written consent.
- 5.3 The provisions in clause 5.1 and 5.2 do not extend to information which:
- (a) is in or enters the public domain through no fault of the recipient;
 - (b) was in the recipient's lawful possession prior to disclosure and had not been obtained by the recipient from the disclosing party;
 - (c) is lawfully disclosed to the recipient by a third party without restriction on disclosure;
 - (d) is independently developed by the recipient without reference to the disclosing party's confidential information;
 - (e) is required to be disclosed by law.
- 5.4 You acknowledge and agree that We will own all intellectual property rights in the Created Materials.

6. USE OF SOFTWARE

- 6.1 In the provision of the Services We may grant to You a non-transferable and non-exclusive licence to use the Software on the following conditions:
- (a) You have no right to transfer, assign, sublicense or otherwise onward distribute the Software to any third party;
 - (b) You agree and warrant that:
 - (i) You will use the Software in accordance with this Agreement;
 - (ii) You will use the Software solely for the purposes of the Services;
 - (iii) You will not use the Software for any commercial purposes in relation to third parties;
 - (iv) You will not interfere with or disrupt the operation of the Software; and
 - (v) You will maintain the security of Your usernames and passwords at all times.
- 6.2 You acknowledge that:
- (a) While We take a commercially reasonable degree of care to ensure the Software meets generally accepted software development standards, We do not warrant that it is free of bugs or errors.
 - (b) You are responsible for obtaining and properly using any computer equipment, software and communications services necessary to use the Software and You are solely responsible for any damage to computer systems or loss of data that may result from Your use of the Software.

7. LIMITATION OF LIABILITY

- 7.1 Neither party will have any liability under or relating to this Agreement for any direct, indirect, special, consequential or exemplary damages.
- 7.2 The maximum aggregate liability of either You or Us under or relating to this Agreement will not exceed the total Fees actually paid by You to Us under this Agreement in the preceding 12 months.
- 7.3 Clauses 7.1 and 7.2 will not apply to liability as a result of wilful default, or in relation to a breach of clause 5 or a breach by You or Us of the other's or a third party's intellectual property rights.

8. TERMINATION

- 8.1 You may terminate this Agreement by giving Us written notice not less than 30 Days before the anniversary of the Commencement Date.
- 8.2 We may immediately terminate this Agreement where You fail to make any payment due under this Agreement within 30 days of Us giving You written notice of any outstanding payment.
- 8.3 Either party may terminate this Agreement by written notice to the other party if the receiving party breaches any term of this Agreement and fails to remedy that breach within 30 Days.

9. GENERAL

- 9.1 Any notice to be given in terms of this Agreement must be made in writing by email in accordance with the parties' details set out on the front page of the Contract Cover Sheet, or to such other address as may be notified by either party to the other from time to time. Any notice by email will be deemed to be received when transmitted to the correct email address of the recipient. Any other notice in writing will be deemed to be received when left at the specified address of the recipient or on the third Day following the date of posting.
- 9.2 This Agreement (together with the Contract Cover Sheet, the Services Schedule and other parts of the Appendix of Terms) constitutes the entire agreement between the parties about its subject matter and supersedes any previous understandings, agreements or representations.
- 9.3 This Agreement will not constitute, or be construed as constituting, either party an employee, agent, partner or joint venturer of the other.

- 9.4 We may vary the Standard Terms by giving You 20 Days written notice. You will be deemed to agree to the varied terms by continuing to use the Services after the date We advise the varied terms come into effect.
- 9.5 If any provision of this Agreement is judged unenforceable, illegal or invalid, it is severed from this Agreement without affecting the validity of the remainder of this Agreement, which will continue in full force and effect.
- 9.6 Neither party will be deemed to have waived any rights under this Agreement unless the waiver is in writing and signed by that party. Any such waiver will not constitute a waiver of any subsequent or continuing right or of any other provision in this Agreement. A failure to exercise or delay in exercising any right under this Agreement will not operate as a waiver of this right.
- 9.7 You may not sub-contract the performance of Your obligations under this Agreement without Our prior written consent. We may sub-contract all or any part of Our obligations under this Agreement, and will remain liable to You for the performance of Our obligations under this Agreement and all acts and omissions of any sub-contractor as if they were Our acts or omissions.
- 9.8 You may not attempt to assign or novate Your rights or obligations under this Agreement without Our written consent, such consent not to be unreasonably withheld. We may with prior notice to You assign or novate Our rights or obligations under this Agreement to an entity that may acquire Us or Our business and/or the assets of Our business without Your consent. Where We exercise this right, this Agreement will continue between You and the entity to whom We have assigned or novated Our rights, in accordance with this Agreement.
- 9.9 Termination of this Agreement will not affect the provisions of this Agreement which are intended to continue, or should reasonably continue, after termination. Termination will also not affect any claim by either party against the other party arising out of any breach or failure under this Agreement prior to termination.
- 9.10 Neither party will be liable for delay or failure to perform its obligations under this Agreement where the delay or failure is due to an event beyond the reasonable control of that party.
- 9.11 This Agreement is governed by the laws of New Zealand and the courts of New Zealand will have exclusive jurisdiction.

10. DEFINITIONS AND INTERPRETATION

- 10.1 In this Agreement, unless the context requires otherwise:
- (a) **Agreement** means the Contract Cover Sheet, the Services Schedule and the Appendix of Terms.
 - (b) **Appendix of Terms** means the Standard Terms attached hereto and any other specific terms that govern Our provision of the Services to You.
 - (c) **Commencement Date** means the date You sign this proposal and contract.
 - (d) **Contract Cover Sheet** means the contract cover sheet attached hereto that You sign with Us in relation to Our provision of the Services to You.
 - (e) **Created Materials** means anything created by Us or on Our behalf, whether tangible or intangible.
 - (f) **Day** means a day of the week other than a Saturday or Sunday or public holiday in New Zealand.
 - (g) **Fees** mean the fees for the Services.
 - (h) **Good Industry Practice** means, in relation to any particular circumstances, the degree of skill, diligence, prudence, foresight and operating practice which would reasonably and ordinarily be expected from a reasonably skilled and experienced provider of equivalent services and/or data of a similar type to that provided pursuant to this Agreement under the same or similar circumstances and conducted in accordance with all applicable laws, rules and regulations.
 - (i) **GST** means goods and services tax chargeable under the Goods and Services Tax Act 1985.
 - (j) **Intellectual Property Rights** means all rights in any patent, copyright, database rights, registered design or other design right, trade mark (whether registered or not and including any rights in get

up or trade dress and including without limitation the Marks), brand name, service mark, trade name, eligible layout right and any other rights of a proprietary nature in or to the results of intellectual activity in the commercial or scientific fields, whether or not registered, able to be registered or patentable.

- (k) **Membership Package** means one or more of the packages of certification, technical or tools services We agree to provide to You.
- (l) **Non-conformance** means an aspect of the emissions inventory/product carbon footprint or emissions management and reduction plan that fails to meet a rule specified in the Technical Requirements and/or may, in Our sole opinion or that of an Auditor, be material to a stakeholder. Where a Non-conformance has been raised, close out of the required corrective actions, and resubmission of the amended documentation may be required before We issue You Certification.
- (m) **Services** means the services provided under this Agreement and includes Your Membership Package and specified in the Services Schedule to this Agreement.
- (n) **Services Schedule** means the schedule to this Agreement attached hereto that sets out the Services We have agreed to provide to You.
- (o) **Software** means the software We may grant You access to for the purposes of Your receipt of the Services and includes any environmental measurement and management software We may make available to You under this Agreement.
- (p) **Standard Terms** means these standard terms in Part I of the Appendix of Terms that apply to all the Services We may provide to You.
- (q) **Website** means the website located at <http://www.enviro-mark.com> or such other location as We may notify to You.

All capitalised words used in this Agreement that have not been defined in these Standard Terms or elsewhere in the Appendix of Terms have the meaning given to them in the Services Schedule.

10.2 In this Agreement, unless the context requires otherwise, a reference to a person includes:

- (a) a reference to that person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns; and
- (b) an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state and an agency of state, in each case, whether or not having a separate legal personality.

10.3 In the event of any conflict or inconsistency between these Standard Terms, any other specific terms in the Appendix of Terms and the Services Schedule, the terms of the Services Schedule will prevail to the extent of such conflict or inconsistency.

Part II: Environmental Certification Terms

THESE TERMS

The terms set out in this Part II of the Appendix outline the additional terms that apply to Our provision of the Certification Services to You.

1. CERTIFICATION FEES

- 1.1 After Your execution and return of this Agreement We or the Auditor may carry out an onsite scope assessment of the Services. You agree that as a result of the onsite scope assessment We may need to vary the estimate of the time it will take to perform Your Audit and adjust the Certification Fee accordingly.
- 1.2 If during the Audit it becomes necessary to spend additional time on Your Audit, We will notify You in writing accordingly and adjust the Certification Fee, except where such adjustment will result in a material increase from Our estimate of the time it will take to perform Your Audit, in which event We will notify You in writing in advance.
- 1.3 If there is an adjustment to the Certification Fee under Clause 1.2 or 1.3, such adjusted Certification Fee will become the new Certification Fee for the Services under this Agreement.
- 1.4 You agree to pay the Fees and the disbursements in accordance with the following payment schedule:
 - (a) You will pay the Annual Membership Fee within 20 Days of the date of Our Annual Membership Fee invoice that We will issue to You upon the Commencement Date of this Agreement (and for subsequent years, the anniversary of such date);
 - (b) You will pay the Certification Fee (including any changes to the Fee payable under Clause 1.2 and/or Clause 1.3) plus any disbursements payable under clause 4.2 of the Standard Terms, within 20 Days of the date of the Certification Fee invoice that We will issue to You after completion of the Certification each year unless You withdraw from the Programme in accordance with Clause 8.1 of the Standard Terms.
- 1.5 If You request Us to engage an external Auditor for Your Audit:
 - (a) You agree to and will comply with the terms under which we contract the Auditor;
 - (b) You acknowledge that any cost estimate of the Audit from that Auditor is only a part of the Certification Fee to be charged by Us; and
 - (c) You will pay all fees and disbursements of the Auditor as notified by Us to You.

2. INTELLECTUAL PROPERTY

- 2.1 You acknowledge and agree that You will not receive or acquire any intellectual property rights relating to the Programme other than a licence to use the Marks in the manner expressly provided for in this Agreement.
- 2.2 You will own all data which relates solely to You and which We have obtained in connection with the Programme ("**Programme Data**"). Subject to clause 2.3, We may use the Programme Data solely in order to provide the Services to You.
- 2.3 Notwithstanding the foregoing, We will retain the right to use, manipulate and publish anonymised and/or aggregated data and products created from the Programme Data in any form and for any purpose, and to charge any fee, that We determine at Our sole discretion. For the avoidance of doubt, the Intellectual Property Rights of the foregoing derived, anonymised and/or aggregated data shall be owned by Us.

3. CERTIFICATION

- 3.1 In order for You to participate in the Programme and for Us to carry Out Your Certification, We will provide You with a copy of the Documentation in either hard copy or electronic form (via Our website on password-protected pages).
- 3.2 We will treat You fairly and without discrimination throughout the provision of the Services.
- 3.3 We will award You Certification (at the level You have achieved if applicable) if You meet the Technical Requirements and have paid the applicable Fees set out in the Schedule to this Agreement. We may, at Our sole discretion, refuse to award You Certification where:
- (a) We believe We have evidence of Your current or recent non-compliance with the international standards and/or regulations relevant to the Programme; and/or
 - (b) We believe that awarding Certification poses an unacceptable threat to Our impartiality, or may damage Our reputation and/or the credibility of the Programme.
- 3.4 Certification will be valid for the Certification Period specified on the certificate issued by Us provided that You continue to meet the Technical Requirements, undergo surveillance Audits as specified by Us, pay the applicable fees when due and otherwise comply with the terms of this Agreement.
- 3.5 Upon Certification, We will grant You a licence to use the Marks during the Certification Period in accordance with this Agreement. If You wish to continue using a Mark after the Certification Period, You must apply for and obtain re-Certification.
- 3.6 You must not:
- (a) make any representation relating to the Programme or Your Certification, except to the extent permitted by this Agreement and the terms on which Certification was granted to You;
 - (b) make any representation relating to the Programme or Your Certification, that may deceive or mislead any person as to the nature and / or scope of Your Certification and / or status of Your membership with the Programme;
 - (c) do or omit to do anything which may bring the Programme into disrepute, or otherwise damage the credibility of the Programme; or
 - (d) purport to transfer the Certification.

4. AUDIT AND VERIFICATION

- 4.1 Audits are conducted when requested by You (when You consider You will meet the requirements of the Programme), and if not requested by You, annually within 12 months of the previous on-site Audit, unless otherwise specified by Us.
- 4.2 We will advise You of the names of the Auditors selected to conduct the Audit. You may object to an individual Auditor or Auditors only on the grounds that they are in a position of conflict due to an activity or relationship which compromises or may compromise their impartiality in conducting the Audit (or any other reasonable grounds agreed to by Us in writing in advance of the Audit).
- 4.3 The date for conducting the Audit will be arranged in consultation with You. If You postpone or cancel the Audit after You have agreed the date with Us, You will pay Us any unrecoverable disbursement costs. If You cancel the Audit less than five Days before the agreed date, You will also pay Us a cancellation fee of 50% of the Certification Fee.
- 4.4 You will:
- (a) provide the Auditors with access (during Your normal business hours) to Your records, premises and staff in order to conduct the Audit;
 - (b) provide the Auditors with such information and data as reasonably required by the Auditors to conduct the Audit. If You have not submitted the required information and data at least five Days

prior to the agreed date for Audit, an additional Audit may be required and You will pay Us for additional time and disbursement costs;

- (c) comply with Our reasonable requests in relation to the Audit in a timely manner and will not obstruct the Audit in any way; and
 - (d) allow observers from any Accreditation Body, as well as trainers and trainee Auditors, to observe the Audit. You will be notified in advance if this is required and upon request We can provide You with a copy of any confidentiality obligations such observers have provided to Us prior to commencing any such observation.
- 4.5 You will take all reasonable steps to ensure that the health and safety of the Auditors, Our staff, technical experts and observers is not compromised while on Your premises. If any of Our personnel identifies a risk to health and safety while on Your premises, We will notify You of this and may suspend the Audit until such risk has been removed to Our reasonable satisfaction.
- 4.6 If the Audit is stopped because the assumptions set out in the Schedule to this Agreement are no longer true, You will pay Us for the work completed up to the point where the Audit stopped.
- 4.7 In the event that the Audit report includes one or more Non-conformances, You must rectify such Non-conformance(s) to the satisfaction of the Auditor within the number of Days specified in the Non-conformance log issued by the Auditor. If the close-out of Non-conformances exceeds this period, You will pay Us additional fees (which may include Our fees for another Audit to be performance at Our discretion where due to the passage of time We can no longer rely on the previous Audit) which We will charge to You on a time and disbursements basis. For the purposes of this Clause 4.7, "close out" means either:
- (a) where the Non-conformance is an error, the correction of that error to Our reasonable satisfaction;
 - or
 - (b) where the Audit findings require certain actions to be implemented by You, receipt by Us of sufficient evidence to show that such actions have been implemented.
- 4.8 You warrant that all information and data provided by You for the purposes of the Audit and any additional Audits (whether pursuant to Clause 4.4(b), 4.7 or otherwise) is accurate, complete, up to date and not misleading.

5. USE OF MARKS

- 5.1 Where in the course of the provision of the Services, We give You permission to use any Marks, You shall:
- (a) use the Marks in accordance with the Certification Mark Guide and this Agreement;
 - (b) not use the Marks unless You have a current Certification under the Programme or (where expressly permitted in writing by Us) are working towards Certification and have paid all applicable Fees;
 - (c) not sublicense the Marks or otherwise allow any third party (including, without limitation, a retailer or a distributor) to use the Marks without Our prior written approval (which may be subject to conditions);
 - (d) provide Us with drafts of all material You intend to produce that use any of the Marks and/or contain any references in relation to the Certification and/or the Programme, and obtain Our written approval to such use prior to release of the material;
 - (e) maintain accurate and up to date records of all Your use of the Marks and, if requested by Us on reasonable notice, permit an independent Auditor to inspect such records (at Our cost) during Your normal business hours to assess Your use of the Marks;

- (f) during any Audit other than the first Audit, provide to the Auditor on request examples of Your use of the Marks;
- (g) not alter any of the Marks in any way, except with Our prior written approval; and
- (h) comply with all Our reasonable directions in relation to Your use of the Marks.

5.2 You are responsible for ensuring that Your use of the Marks is not likely to mislead or deceive. We will not be liable to You or any third party for a claim that Your use of the Marks is misleading or deceptive.

5.3 Subject to Clause 5.4, You must only use the Marks (and not any other mark or design) in relation to Your Certification or as otherwise agreed by Us.

5.4 We and You may develop a new trade mark (which may or may not incorporate a component of the Marks) for Your use in relation to Your Certification ("**New Mark**"). You agree that:

- (a) We will own all intellectual property rights in the New Mark;
- (b) You will not receive or acquire any intellectual property rights relating to the New Mark, other than a licence to use the New Mark in accordance with this Agreement;
- (c) the terms of this Agreement that relate to Your use of the Marks will also apply to Your use of the New Mark; and
- (d) if We grant to a third party a licence to use the New Mark, such licence will be subject to such terms and conditions as You and We may agree.

6. CARBON CREDITS (IF APPLICABLE)

6.1 Where You require carbon credits for Your Certification, the provisions of Part III of the Appendix will apply.

7. PUBLIC STATEMENTS

7.1 During the Certification Period, You may publicise Your Certification, and use any Programme promotional material provided by Us for publicity and advertising purposes, in accordance with Our reasonable directions.

7.2 Unless otherwise agreed with You in writing, We may publicise Your application for Certification and/or Your participation in the Programme. We may also make a statement on the 'Suspended or Withdrawal' section of Our website for a period of three months regarding Your Certification in the following circumstances:

- (a) if You do not take all steps necessary to complete re-Certification, We may publish Your name on the Website stating that Your Certification has been suspended or withdrawn and inform the relevant Accreditation Body of such fact;
- (b) if Your Certification has been suspended or withdrawn, We may publish Your name on the Website stating that Your Certification has been suspended or withdrawn and inform the relevant Accreditation Body of such fact;
- (c) if there is any confusion relating to Your Certification, We may issue a statement clarifying the matter and inform the relevant Accreditation Body of such fact.

7.3 We will maintain a register of all current Licensees and will make the register available for public inspection.

8. COMPLAINTS AND APPEALS

8.1 If We receive any complaints from third parties about You in relation to Your Certification, We will notify You of this and investigate the complaint. We will provide a copy of the investigation report to You and the complainant. If, as a result of the investigation, We consider that Your Certification is no longer

valid, We may (at Our sole discretion and without liability to You) either suspend or withdraw Your Certification.

- 8.2 If You have any complaints about Our Audit and Certification services, or a Certification decision, such complaints will be dealt with in the manner set out on the Website.
- 8.3 You will provide Us with all assistance and information that We may reasonably require for the purposes of resolving any complaint We receive.

9. MODIFICATION, SUSPENSION OR DISCONTINUANCE OF PROGRAMME

- 9.1 We reserve the right at any time, and from time-to-time, to modify or discontinue (either temporarily or permanently) the Programme or any part of it (with or without notice). You agree that We will not be liable to You or any third party for any modification, suspension or discontinuance of the Programme.
- 9.2 Where the Programme is modified in a manner that You, acting reasonably, consider materially changes the nature of the benefits to be received by You, then You may withdraw from the Programme by giving Us the required length of written notice as set out in Clause 8.1 of the Standard Terms.

10. CHANGE OF CIRCUMSTANCE, WITHDRAWAL AND SUSPENSION

- 10.1 You must advise Us as soon as practicable of any circumstances which may affect Your ability to meet the Technical Requirements and other standards and specifications as listed in the Schedule to this Agreement. We may (at Our option) either suspend or withdraw Your Certification if We consider that the Certification is no longer valid due to a change in Your circumstances.
- 10.2 Following Certification, where We have reason to believe that Your circumstances have changed but You have not notified Us, We may conduct additional Audits at any time to determine whether You continue to meet the Technical Requirements. If an additional Audit identifies that You no longer meet the Technical Requirements, We will give You notice of Our findings and You will have 20 Days from the date of such notice to remedy the Non-conformance and You will reimburse Us for the reasonable cost of the additional Audit. If You do not remedy the Non-conformance to Our satisfaction within the '20 Day period', We may (at Our option) either suspend or withdraw Your Certification.
- 10.3 If We exercise Our right to suspend Your Certification under Clause 10.1 or 10.2, then:
 - (a) during the suspension (which shall be for a period of not more than 6 months), We and You will meet and, in good faith, try to resolve the issue; and
 - (b) if Your Certification has been suspended for 6 months, then at such time We will (at Our option) either re-instate or withdraw Your Certification.
- 10.4 Where an Audit date has been agreed prior to any written notice of termination of this Agreement by You, Clause 4.3 applies.

11. CONSEQUENCES OF EXPIRY, WITHDRAWAL, SUSPENSION AND TERMINATION

- 11.1 If We suspend Your Certification for any reason, then (until the suspension has been lifted at Our sole discretion) You must cease all use of the Marks and cease all other representations to the effect that You have Certification, and You must not place into the market or circulate any products, services, promotional material or any other matter bearing any of the Marks or make any representation that You have Certification.
- 11.2 If You withdraw from the Programme, or We withdraw Your Certification for any reason, or Your Certification has expired, then this Agreement will automatically terminate and You must:
 - (a) immediately cease all use of the Marks and cease all other representations to the effect that You have Certification;
 - (b) immediately pay to Us all amounts owing pursuant to this Agreement; and

- (c) not place into the market or circulate any products, services, promotional material or any other matter bearing any of the Marks or makes any representation that You have Certification.

11.3 Notwithstanding Clause 11.1 and Clause 11.2, You are not required to withdraw from sale or circulation any products, services, promotional material or other matter bearing any of the Marks or otherwise referring to Your Certification which have been placed into the market prior to the suspension or withdrawal of Your Certification or the termination of this Agreement (as the case may be).

12. REFUND OF FEES

12.1 Where the Programme is discontinued pursuant to Clause 9.1, Your obligation to pay any Fees not then owing will cease and We will refund to You such proportion of the Fees that You have paid that relate to a period that has not expired at the date the Programme is so modified, suspended or discontinued.

12.2 If You are not awarded Certification, or You withdraw from the Programme, or Your Certification is suspended or terminated, You will pay all outstanding monies owing under this Agreement (including any amounts owing under Clause 4.3) and We will not refund You any amounts paid pursuant to this Agreement.

13. DEFINITIONS AND INTERPRETATION

13.1 In this Agreement, unless the context requires otherwise:

- (a) **Accreditation Body** means an international accreditation agency or body that We use in relation to the Programme.
- (b) **Annual Membership Fee** means Your annual membership fee for becoming a member of the Programme based on Your organisational environmental profile and service requirements as advised to Us by You and as set out in the Services Schedule or as otherwise advised to You in writing from time to time.
- (c) **Audit** means the assessment undertaken by Us or an Auditor to confirm that You comply with the Technical Requirements. This process may include verification of data and information.
- (d) **Auditor** means an internal or external Auditor that We may appoint to assess Your compliance with the Technical Requirements of the Programme.
- (e) **Certification** means Our certification of You under and in accordance with the Programme (or any level of Certification within the Programme if applicable).
- (f) **Certification Fee** means the fee We calculate using Our hourly rate and reflecting the time We estimate it will take to complete Your Audit, any technical review and Your Certification, which estimate may be varied by the scope assessment (if any) and completion of the actual Audit as further outlined in Clause 1.
- (g) **Certification Mark Guide** means the certification mark use guide issued by Us, as amended by Us from time to time.
- (h) **Certification Period** means the period of time stated on the Certification for which the Certification is valid as long as the provisions set out in this Agreement are met.
- (i) **Documentation** means any documents related to Your participation in the Programme, notes, templates, registers, checklists and any other documents We may issue to You whether in hard or electronic copy in relation to the Programme. For the avoidance of doubt, Intellectual Property Rights include Documentation.
- (j) **Fees** include the Annual Membership Fee, the Certification Fee and any other fees listed or referred to in the Schedule.
- (k) **Level** means a level, step or stage of certification in the Programme, where applicable to the Programme.

- (l) **Licensee** means a person that has been granted certification under a certification programme operated by Us.
- (m) **Marks** means the word marks and logo marks issued to You and used by You as evidence that Your organisation, product, service or event (as applicable) meets the Programme requirements as set out in the Technical Requirements, these additional terms, the Standard Terms and the Certification Mark Guide.
- (n) **Programme** means the certification programme specified in the Schedule to this Agreement.
- (o) **Technical Requirements** means a document issued by Us which contains the technical requirements or rules for Certification, as amended by Us from time to time.