

## SUSTAINABILITY VICTORIA – FIRSTRATE5 END USER TERMS OF SERVICE (Version 1.5, July 2021)

**THIS IS A BINDING AGREEMENT** between Sustainability Victoria ABN 62 019 854 067 (**Sustainability Victoria**) and any person who registers a User Account on the Site (**Registered User**).

In consideration of Sustainability Victoria granting you with access to and/or use of:

- (a) your User Account on the Site; and
- (b) the Services,

you agree to be bound by the terms and conditions set out in these Terms of Service.

### 1. DEFINITIONS

In these Terms of Service:

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

**Certificate Credits** means the credits provided to you upon payment of the Certificate Fee which permits you to generate Thermal Performance Certificates, as more fully described in clause (h).

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

**FirstRate5 Software** means the software licensed by Sustainability Victoria to authorised persons on the terms and conditions of the Software Licence Agreement, used for the purposes of conducting thermal performance assessments of new and/or existing residential dwellings in Australia.

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

**NatHERS** means the Nationwide House Energy Rating Scheme.

**Original Thermal Performance Certificate** means the first Thermal Performance Certificate generated with respect to a dwelling for which Certificate Credits were deducted from the Registered User's account.

**Project File** means a data file in a format approved by Sustainability Victoria (as described on the Site) which a Registered User may upload to the Site in order to generate a Thermal Performance Certificate.

**Registered User** means a person who registers a User Account and includes any person who applies for registration of a User Account. In these Terms of Service:

- (a) “you” is to be read “the Registered User”; and
- (b) “your” is to be read as “the Registered User’s”.

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

**Services** means the services provided by Sustainability Victoria via the Site relating to the generation of Thermal Performance Certificates, as more fully described in clause 3.

**Site** means the FirstRate5 website located at <www.fr5.com.au>.

**Software Licence Agreement** means the licence agreement under which Sustainability Victoria grants certain limited rights to use the FirstRate5 Software.

**Terms of Service** means these End User Terms of Service entered into between you and Sustainability Victoria when you apply for or register a User Account.

**Thermal Performance Assessor** mean a person accredited by an AAO to assess the thermal performance of dwellings.

**Thermal Performance Certificate** means a certificate generated by the Site which sets out a dwelling's thermal performance as determined in accordance with the NatHERS.

**User Account** means an account registered by a Registered User on the Site under clause 2.

## 2. REGISTRATION OF USER ACCOUNT

- (a) **Registration.** You must register and maintain a User Account in order to:
  - (i) upload Project Files;
  - (ii) generate Thermal Performance Certificates to demonstrate compliance with the thermal performance requirements of the National Construction Code;
  - (iii) access and download Thermal Performance Certificates which you have previously generated; and
  - (iv) download the FirstRate5 Software.
- (b) **Accuracy.** When you are registering as a Registered User of the Site, you must provide Sustainability Victoria with accurate, complete and up-to-date information as requested on the registration page of the Site. It is your responsibility to inform Sustainability Victoria of any changes to that information. You may do this at any time by accessing your User Account on the Site.

- (c) **Obligations.** Sustainability Victoria may, in its absolute discretion, refuse registration or close your User Account if:
- (i) you breach these Terms of Service or the Software Licence Agreement;
  - (ii) you open or attempt to open a User Account using incomplete or falsified details, or otherwise in a fraudulent or illegal way; or
  - (iii) Sustainability Victoria considers refusal of registration or the closure of your User Account is necessary to comply with Sustainability Victoria's obligations at law.
- (d) **Responsibility and security.** You acknowledge and agree that:
- (i) your password is confidential and you must take reasonable precautions to keep it confidential;
  - (ii) you must not disclose your password to any person;
  - (iii) you must change your password regularly;
  - (iv) you must notify Sustainability Victoria if the confidentiality of your password is compromised; and
  - (v) you are solely responsible for all activities that occur on your User Account undertaken by you or undertaken by another person in circumstances where you have failed to comply with any of the requirements referred to in paragraphs (i) to (iv).

### 3. SERVICES

- (a) **Uploading of Project Files.** Once you have registered a User Account, you may upload one or more Project Files.
- (b) **Assessment.** The Site will indicate the dwelling's thermal performance assessment on the basis of the data and information contained in the uploaded Project File(s).
- (c) **Discrepancies.** If the thermal performance assessment indicated by the Site is not consistent with the results that you expect from the Project File(s), you should address this discrepancy before generating the relevant Thermal Performance Certificate(s) (for example, by validating or re-uploading the applicable Project File(s)).
- (d) **Thermal Performance Certificates.** Once you are satisfied with the thermal performance assessment indicated by the Site, you may generate one or more Thermal Performance Certificates (but you must have obtained Certificate Credits in order to do so, as more fully described in clause (h) below). Each Thermal Performance Certificate generated by you will be emailed to the email address set out in your User Account details and will also be available for you to download from your User Account. Only Thermal Performance Certificates can be used to demonstrate compliance with the performance requirements of the National Construction Code.

- (e) **No modifications to Project Files.** Once a Thermal Performance Certificate has been generated by the Site, you will not be able to make modifications to the Project File(s) that you have uploaded to generate that Thermal Performance Certificate. However, you may upload a Revised Project File in accordance with clause 3(h).
- (f) **Invalidation of Thermal Performance Certificates.** You may invalidate any Thermal Performance Certificate stored in your User Account. You will not be able to revalidate any Thermal Performance Certificate once invalidated. You will need to contact Sustainability Victoria if you wish to revalidate a Thermal Performance Certificate (for example, because you accidentally invalidated it). To avoid doubt, invalidation of a Thermal Performance Certificate does not entitle you to any refund or reinstatement of the Certificate Credits applied in respect of that Thermal Performance Certificate.
- (g) **FirstRate5 Software.** You acknowledge that superseded versions of the FirstRate5 Software may not meet the requirements of the NatHERS Software Accreditation Protocol (see <https://www.nathers.gov.au/nathers-accredited-software>) and may not create Project Files which are suitable for generating Thermal Performance Certificates. It is your sole responsibility to ensure that you are using a version of the FirstRate5 Software that creates Project Files which are suitable for generating Thermal Performance Certificates. Sustainability Victoria is under no obligation to produce Thermal Performance Certificates from superseded versions of the FirstRate5 Software. Sustainability Victoria may agree or decline to produce Thermal Performance Certificates from superseded versions of the FirstRate5 Software or agree subject to conditions or in limited circumstances, in its absolute discretion.
- (h) **Replacement of Thermal Performance Certificates.** The Site allows you to upload a Revised Project File and generate a replacement Thermal Performance Certificate without further Certificate Credits being deducted from your account if:
  - (i) the Original Thermal Performance Certificate was generated on or after 12 July 2021 (9am) and not more than 12 months ago; and
  - (ii) the address of the dwelling in the Revised Project File exactly matches the address of the dwelling in the Original Thermal Performance Certificate.

#### 4. PAYMENT

- (a) **Purchase and use of Certificate Credits.** In order to generate a Thermal Performance Certificate, you must pre-pay for one or more Certificate Credits (by one of the payment methods permitted on the Site) (**Certificate Fee**). The amount you must pay for each Certificate Credit, as well as the number of Certificate Credits that you will need to apply in order to generate a Thermal Performance Certificate, are specified on the Site. The applicable number of Certificate Credits will

be applied against your then current Certificate Credit balance when you generate a Thermal Performance Certificate.

- (b) **Change to Certificate Fees.** Sustainability Victoria may vary the amount you must pay to obtain Certificate Credits from time to time in its absolute discretion (subject to the procedure specified for varying these Terms of Service set out in clauses 12(e) to 12(h).
- (c) **Maximum number of Certificate Credits.** The maximum number of Certificate Credits you may hold in your User Account at any one time is 1,000.
- (d) **Expiry of Certificate Credits.** Certificate Credits will automatically expire on the date that is 12 months from the date on which you purchase them, except a Certificate Credit which is stated to expire on the date that is 2 months from the date of purchase, which will expire on the date stated.
- (e) **Certificate Credits are not transferrable or refundable.** You acknowledge and agree that unused Certificate Credits in your User Account are:
  - (i) not transferrable; and
  - (ii) not refundable in any circumstance except as expressly provided for in these Terms of Service or the Software Licence Agreement, or if Sustainability Victoria otherwise determines, in its sole and absolute discretion, to refund you for any unused Certificate Credits.
- (f) **GST.** If Sustainability Victoria makes a supply under or in connection with these Terms of Service on which GST is imposed (not being a supply the consideration for which is specifically described as GST inclusive):
  - (i) the consideration payable or to be provided for that supply under these Terms of Service but for the application of this clause (GST exclusive consideration) is increased by, and you must also pay to Sustainability Victoria, an amount equal to the GST payable by you on that supply; and
  - (ii) the amount by which the GST exclusive consideration is increased must be paid to Sustainability Victoria by you without set off, deduction or counter-claim, at the same time as the GST exclusive consideration is payable or to be provided.

If a payment to a party under these Terms of Service is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

## 5. YOUR RESPONSIBILITIES

- (a) **ISP Services.** To use and access the Services, you must have access to:

- (i) a valid User Account on the Site; and
  - (ii) an account for the provision of internet services (**ISP Services**) with an ISP in Australia.
- (b) Your ISP (and not Sustainability Victoria) is responsible for the provision of ISP Services pursuant to any agreement between you and that ISP in respect of those ISP Services. You are responsible, and are solely liable, for any account charges or other costs incurred in relation to the ISP Services, including without limitation the use of the Services using the ISP Services.
- (c) **Information.** You agree to provide all information required to enable Sustainability Victoria to provide the Services. You must ensure that all such information is accurate and complete. Sustainability Victoria will not be liable for any loss or damage arising from any inaccuracy, omission or other defect in any such information (including in any Project Files).
- (d) **Compliance.** You must comply with any reasonable directions of Sustainability Victoria from time to time in relation to your access to or use of the Site and the Services. In addition, you must use the Site and the Services in good faith, and must at all times comply with these Terms of Service and all applicable laws, statutes and regulations in all jurisdictions that relate to your access to or use of the Site and Services (including, without limitation, applicable privacy laws).

## 6. RESTRICTIONS ON USE

- (a) **Restrictions.** You must not:
- (i) use the Site or the Services for any purpose other than as permitted by these Terms of Service;
  - (ii) remove or alter any copyright notices on the Site or the Services;
  - (iii) disassemble, decompile, reverse engineer, or create derivative works or functionally equivalent software from the Site (except to the extent permitted by Division 4A of Part III of the *Copyright Act 1968* (Cth));
  - (iv) disassemble, decompile, reverse engineer, or create derivative works from the Site or the Services;
  - (v) copy or download, in a systematic manner, any content, graphics, video, text or animation from the Site or the Services, or communicate or otherwise distribute such systematically obtained content, graphics, video, text or animation;
  - (vi) modify, doctor or tamper with any Thermal Performance Certificate or preview certificate generated from the Site; or
  - (vii) incorporate the Services in any product to be made available commercially (unless Sustainability Victoria expressly gives its consent).

- (b) **Disruption.** You must not deliberately introduce or permit the introduction of, or act recklessly in relation to the introduction or permitting the introduction of, any virus, worm, trojan or other malicious code into the Site or the Services, or deliberately corrupt, degrade or disrupt or act recklessly in relation to the corruption, degradation or disruption of the Site or the Services.
- (c) **Unlawful, unauthorised or dangerous use.** You must not (nor permit a third party to) submit any data or information to the Site or the Services, nor otherwise use the Site or the Services:
  - (i) to engage in any activity which breaches any law, infringes a third party's rights, or in a manner which interferes with the rights of any other person;
  - (ii) which infringes the Intellectual Property Rights (including trade marks and copyright) of Sustainability Victoria or any third party;
  - (iii) in any way that is defamatory, obscene, misleading or deceptive or otherwise illegal; or
  - (iv) in any way that constitutes misuse, or resale or other commercial use, of the Services or any associated materials.
- (d) **Misuse of Services.** Without limiting clause 6(c), you must not use the Site or the Services for any purpose other than as described under these Terms of Service and the Software Licence Agreement.

## 7. DISCLOSURES BY SUSTAINABILITY VICTORIA

- (a) **Disclosure.** You agree and acknowledge that Sustainability Victoria may disclose to:
  - (i) representatives of a relevant AAO, NatHERS, the Australian Building Codes Board or such other body responsible for the National Construction Code and other such relevant bodies, details of your use of the Site and the Services, including Project Files, for the purposes of any audit, inquiry or investigation into your accreditation and use of the Site and Services; and
  - (ii) other government departments and entities (for example CSIRO) details of your use of the Site and the Services, including Project Files (and all data and information in them), for the purposes of research, analysis and policy development.
- (b) **Licence.** You grant to Sustainability Victoria an irrevocable, perpetual, non-exclusive, worldwide, royalty-free licence to use, reproduce, modify, adapt and communicate the Project Files (and all data and information in them), and to sublicense third parties to do those things:
  - (i) to enable Sustainability Victoria to deliver and improve the Services; and
  - (ii) to enable Sustainability Victoria (or other third parties) to perform statistical analysis or research relevant to Sustainability Victoria's (or those third parties') functions and purposes and to publish the results of such research or any statistical analysis in a manner that does not allow the data contained in any individual Project File to be

identifiable (**Aggregated Data**) and to license users of the Aggregated Data to use, sub-license, distribute, reproduce, modify, adapt, publish, translate, publicly perform and publicly display the Aggregated Data (in whole or in part) and to incorporate the Aggregated Data into other works in any format or medium now known or later developed.

- (c) You warrant to Sustainability Victoria that you have all rights necessary to grant this licence.
- (d) **Site, Services and Thermal Performance Certificates.** You agree that all rights, title and interest (including all Intellectual Property Rights) in and to the Site, the Services and any Thermal Performance Certificates vest absolutely in Sustainability Victoria (and/or its third party licensors). Subject to payment by you of the applicable Certificate Fee, Sustainability Victoria grants you an irrevocable, perpetual, non-exclusive licence to use each Thermal Performance Certificate generated by you for your business purposes. The only rights you have in respect of the Services and any Thermal Performance Certificates are those granted to you under these Terms of Service.

## 8. DISCLAIMER, LIMITATIONS AND EXCLUSIONS

- (a) While the FirstRate5 Software and the Site have been developed by Sustainability Victoria in good faith and using all reasonable care, Sustainability Victoria gives no warranty in respect of the FirstRate5 Software (except as expressly provided in clause 2 of the Software Licence Agreement), the Site or the Services, or their operation, accuracy, completeness, currency or suitability for any particular purpose.
- (b) Without limiting the scope of clause 8(a), Sustainability Victoria does not warrant:
  - (i) that the FirstRate5 Software or the Site are free from bugs, defects or programming errors. Sustainability Victoria does not accept any liability for loss or damages incurred as a result of reliance placed upon the FirstRate5 Software, the Site or the Services; or
  - (ii) that the FirstRate5 Software, the Site or the Services will be continuously available or reliable, and Sustainability Victoria will not be liable if the Services, or any information obtained in relation to them, is inaccurate, outdated or incorrect, or if the Services or ISP Services are unavailable for any reason, including directly or indirectly as a result of:
    - A. telecommunications unavailability, interruption, delay, bottleneck, failure or fault;
    - B. negligent, malicious or wilful acts or omissions of third parties (including Sustainability Victoria's third party service providers);



- C. maintenance or repairs carried out by Sustainability Victoria or any third party service provider in respect of any of the systems used in connection with the provision of the Services or the ISP Services;
  - D. any events beyond Sustainability Victoria's control; or
  - E. services provided by third parties ceasing to be available or becoming unavailable.
- (c) The FirstRate5 Software provides an estimate only of the energy use of the building fabric when the dwelling is heated and cooled to a prescribed pattern. The accuracy of the estimate provided by the FirstRate5 Software is dependent on factors beyond the control of Sustainability Victoria (**Dependencies**), including without limitation:
- (i) information and data entered into the FirstRate5 Software by you (**Licensee Inputs**), including construction details, third party product and material details and the area of the dwelling;
  - (ii) information and data that the FirstRate5 Software incorporates (either manually or automatically) from external websites and other external sources (**External Inputs**); and
  - (iii) the actual energy consumption of the relevant house or dwelling when occupied, which will be dependent on actual appliance use patterns and efficiency.
- (d) Sustainability Victoria has no control over such Dependencies and cannot attest to the accuracy of Licensee Inputs or External Inputs.
- (e) Accordingly, information about energy savings derived from or implied by use of the FirstRate5 Software by you is indicative only and:
- (i) Sustainability Victoria does not warrant or guarantee that energy savings indicated by the FirstRate5 Software will be realised; and
  - (ii) other than as strictly set out in a Thermal Performance Certificate validly obtained in accordance with these Terms of Service and the Software Licence Agreement, you must not make any claims (including public statements) relating to energy consumption, efficiency or savings based on your use of, or reliance on, the FirstRate5 Software.
- (f) **Benefit.** Any representation or warranty made by Sustainability Victoria in or under these Terms of Service is only made for your benefit.
- (g) **Cap on Sustainability Victoria's liability.** Sustainability Victoria limits its liability to you under or in connection with these Terms of Service and the Software Licence Agreement for or in respect of any loss, damage, liability, cost or expense (**Loss**) suffered or incurred by you,

whether direct or indirect, and however caused (including, without limitation, whether for breach of contract, in tort (including negligence), for breach of warranty, under statute or under any other cause of action), to the total value of Certificate Fees paid by you to Sustainability Victoria in the period of 12 months before you notify Sustainability Victoria of any claim that you have or may have against Sustainability Victoria.

- (h) **Exclusion of Indirect or Consequential Loss.** Sustainability Victoria excludes any and all liability to you for or in respect of any and all Indirect or Consequential Loss.
- (i) For the purposes of clause 8(h), Indirect or Consequential Loss means:
  - (i) any and all Loss that does not arise naturally (that is, according to the usual course of things) from the event giving rise to the Loss; and
  - (ii) any loss of profit, loss of revenue, loss of savings, loss of business, loss of goodwill, loss of opportunity, loss of or damage to reputation (in each case, whether actual or anticipated), loss of or damage to data and lost or wasted overheads.
- (j) **Exclusion of implied terms.** Any conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied or conferred by statute, custom or the general law that impose any liability or obligation on Sustainability Victoria are excluded under these Terms of Service.
- (k) **Consumer Guarantees.** If any consumer guarantee within the meaning of the Australian Consumer Law (meaning the Australian Consumer Law set out at Schedule 2 to the *Competition and Consumer Act 2010* (Cth)) (**Consumer Guarantee**) applies to any goods or services provided by Sustainability Victoria to you, Sustainability Victoria limits its liability for any failure to comply with such Consumer Guarantee to:
  - (i) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
  - (ii) in the case of software or other goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.
- (l) Without limiting the generality of any of clauses (a) to (k), Sustainability Victoria will not be liable to you for or in respect of any Loss to the extent such Loss is caused, or contributed to, by:
  - (i) your improper installation of the FirstRate5 Software;
  - (ii) your use of the FirstRate5 Software or the Site other than in accordance with the documentation supplied by Sustainability Victoria with the FirstRate5 Software or the Site;

- (iii) any failure by you to comply with any direction given to you by Sustainability Victoria;
  - (iv) any breach by you of these Terms of Service or the Software Licence Agreement;
  - (v) any improper act or omission by you or another person acting under your instruction or control, including any modification or attempted modification of the FirstRate5 Software or the Site not authorised by Sustainability Victoria;
  - (vi) your use of the FirstRate5 Software or the Site with or in combination with any software or equipment that is not approved by Sustainability Victoria; or
  - (vii) any failure or malfunction of any equipment, service (including any power surge or interruption to power or telecommunications services or the internet) or software not provided by Sustainability Victoria, whether or not caused by you.
- (m) None of clauses (a) to (l) will in each case have the effect of limiting, excluding, restricting or modifying:
- (i) Sustainability Victoria's liability or obligations under these Terms of Service except to the extent permitted by law; or
  - (ii) the application of any Consumer Guarantee to the extent such limitation, exclusion, restriction or modification is not permitted by the Australian Consumer Law.

## 9. INDEMNITY

- (a) You indemnify Sustainability Victoria and its officers, employees, agents and contractors (**those indemnified**), and will keep them indemnified, from and against any and all actions, claims, charges, costs (including legal costs on a full indemnity basis), expenses, losses, damages and other liabilities suffered or incurred by any of those indemnified arising directly or indirectly out of or in connection with any claim by a third party (including, without limitation, a home owner or builder) against Sustainability Victoria relating to your use of or reliance on the Site, the Services, FirstRate5 Software, any third party reference libraries or information incorporated into or used as part of the FirstRate5 Software.
- (b) You are not required to indemnify any of those indemnified to the extent that a relevant action, claim, charge, costs, expense, losses, damage or liability is caused by the negligence of any of those indemnified.
- (c) To the extent that you indemnify persons other than Sustainability Victoria under clause 9(a) (**the Beneficiaries**), Sustainability Victoria holds the benefit of the indemnity on trust for and may enforce the indemnity directly against you for and on behalf of the Beneficiaries, notwithstanding that such persons are not a party to these Terms of Service.

## 10. TERMINATION

(a) **Termination for breach.** Where:

- (i) you have breached any provision of these Terms of Service or the Software Licence Agreement and (if the breach is capable of remedy) you fail to remedy that breach within 7 days of receiving written notice from Sustainability Victoria to remedy the breach; or
- (ii) you are or become bankrupt or insolvent,

Sustainability Victoria may without prejudice to any other rights or remedies, by written notice immediately terminate any or all of these Terms of Service, the Software Licence Agreement, or the provision of any Services. This will include termination of your User Account.

(b) **Termination without cause.** Sustainability Victoria may terminate your access to and use of the Site and the Services (including your User Account) without cause by giving you 30 days' prior written notice. You may close your User Account at any time via your 'Profile' section of the Site.

(c) **Consequence of termination.** You acknowledge and agree that, on termination of these Terms of Service for any reason other than under clause 10(b), or should you close your User Account other than in the circumstances covered by clauses 12(e) to 12(h), all unused Certificate Credits in your User Account will expire immediately and are not refundable.

(d) If Sustainability Victoria terminates under clause 10(b):

- (i) Sustainability Victoria will refund to you any unused Certificate Credits, provided that you are not in breach of either the Software Licence Agreement or these Terms of Service; and
- (ii) such refund will be Sustainability Victoria's sole obligation and liability to you in connection with the termination.

(e) **Survival.** Clauses **Error! Reference source not found.**, 9, 11 and 12 survive termination of these Terms of Service for any reason.

## 11. CONFIDENTIALITY AND PRIVACY

- (a) You will not disclose to any third party, without the prior written consent of Sustainability Victoria, any confidential information received for the purposes of using the Site or receiving the Services. Sustainability Victoria's confidential information includes its methodologies and tools. The obligations in this clause 11 do not apply to information which is or becomes generally available to the public (other than as a result of a breach of an obligation under this clause), is independently developed by you, or is required by law to be disclosed.

- (b) Sustainability Victoria's privacy policy relating to information collected by Sustainability Victoria may be accessed by following the link labelled 'Privacy Policy' on the Site, and forms part of these Terms of Service.

## 12. GENERAL

- (a) **Assignment.** You may not assign or transfer your rights under these Terms of Service, or attempt or purport to do so, without Sustainability Victoria's prior written consent (which may be given or withheld at our absolute discretion).
- (b) **Force majeure.** Neither party will be liable to the other for any failure to fulfil, or delay in fulfilling, its obligations caused by circumstances outside of its reasonable control. However, this paragraph does not apply to any of your obligations to pay money for Services performed.
- (c) **Governing law.** These Terms of Service are governed by and interpreted in accordance with the laws of the State of Victoria, Australia, and both of us submit to the jurisdiction of the courts of that State.
- (d) **Severability.** If any provision, or part of a provision, of these Terms of Service is found to be illegal or unenforceable it will be severed from the agreement, and the remainder of these Terms of Service will be construed as if that provision or part did not form part of these Terms of Service. The previous sentence will not apply if the provision or part to be severed constitutes a material and fundamental element of the agreement between the parties.
- (e) **Variation.** Sustainability Victoria may at any time amend the terms and conditions of these Terms of Service (including the amount you must pay to obtain Certificate Credits under clause (h)(b)) by:
  - (i) publishing a notice of the amendments on the Site; and
  - (ii) notifying every Registered User by email of the variation.
- (f) Subject to clause 12(ha), variations will take effect upon the date specified in the notice provided under clause 12(e) (**Date of Effect**), which date will not be less than 30 days before the date of the notice.
- (g) If you do not accept the variation, you may terminate these Terms of Service and the Software Licence Agreement with immediate effect by notifying Sustainability Victoria in writing no less than five days before the Date of Effect.
- (h) If you terminate under clause 12(g):
  - (i) Sustainability Victoria will refund to you any of your unused Certificate Credits, provided that you are not in breach of either these Terms of Service or the Software Licence Agreement; and

- (ii) such refund will be Sustainability Victoria's sole obligation and liability to you in connection with your termination.
- (ha) **Minor updates.** Sustainability Victoria may effect minor changes and updates to these Terms of Service, or changes that will benefit you, by providing less than 30 days' notice to you, and the changes or updates will be effective from the date specified in the notice.
- (i) **Notices.** Sustainability Victoria may provide a written notice under these Terms of Service:
  - (i) if the notice is to all Registered Users, by publishing a notice on the Site; and
  - (ii) if the notice is to you, by notifying you by email at the email address specified in your User Account.
- (j) The Licensee may provide a written notice to Sustainability Victoria by emailing support@fr5.com.au.
- (k) Notices published on the Site will be deemed to have been made on the day that the notice is published. If that day is not a business day in Melbourne, Victoria, or the notice is published after 5pm on a business day in Melbourne, Victoria, the notice will be deemed to have been published on the next business day in Melbourne, Victoria.
- (l) Notices by email will be deemed to have been received by the addressee within one hour of the message leaving the sender's email server, provided that the sender does not receive a notification that the email could not be delivered to the addressee. If the email is sent on a day is not a business day in Melbourne, Victoria, or it is sent after 5pm on a business day in Melbourne, Victoria, the email will be deemed to have been received at 9am on the next business day in Melbourne, Victoria.
- (m) Nothing in clauses 12(i) to 12(l) limits the means by which a party may otherwise lawfully effect the service of a notice on the other party.
- (n) **Entire agreement.** To the extent permitted by law, these Terms of Service are the entire agreement between us on its subject matter and supersede any previous arrangements, agreements, representations, understandings or statements (whether verbal, in writing, or in some other format).