

## SEC Certification Agreement

This Agreement is between Customer and Sustainable Energy Commitment Pty Ltd. "Customer" means the entity on behalf of which this Agreement is accepted or, if that does not apply, the individual accepting this Agreement. "Sustainable Energy Commitment" or "SEC" means the entity that owns or operates the Products that Customer uses or accesses listed here.

If you (the person accepting this Agreement) are accepting this Agreement on behalf of your employer or another entity, you agree that: (a) you have full legal authority to bind your employer or such entity to this Agreement, and (b) you agree to this Agreement on behalf of your employer or such entity.

If you are accepting this Agreement using an email address from your employer or another entity, then: (a) you will be deemed to represent that party, (b) your acceptance of this Agreement will bind your employer or that entity to these terms, and (c) the word "you" or "Customer" in this Agreement will refer to your employer or that entity.

By clicking on the "Agree" (or similar button or checkbox) confirms your authorisation and acceptance of this agreement. If you do not wish to be bound by this agreement, do not click "Agree" (or similar button or checkbox).

## SEC Terms

1. SEC has agreed to licence the SEC Energy Management System to you on the terms of this Agreement.
  - a. This Agreement will commence on the Commencement Date and continue unless and until terminated in accordance with its terms (**Term**).
  - b. Your rights under this Agreement only apply to the entity listed in Item 2 of Schedule 1, and do not extend to your subsidiaries, related entities, Affiliates, parent companies, or any other associated entity unless expressly stated in this Agreement.
2. **Authorisation**
  - a. You accept that the signing of this document does not give you status as an 'Authorised User' for the purposes of SEC.
  - b. You agree to comply with the 'Sustainable Energy Commitment Certification Trademark Rules'.
3. **Definitions and Interpretation**
  - a. **Affiliates** means directors, officers, employees, contractors, successors, and related entities and related body corporate, as defined in the Corporations Act 2001 (Cth).
  - b. **Authorised User** a business who has been approved by SEC as authorised users of the SEC Energy Management
  - c. **CEH** refers to Circular Energy Holdings Pty Ltd, ACN 652 449 548, is the parent company for Sustainable Energy Commitment Pty Ltd and Maximum Technologies Pty Ltd.
  - d. **Certified Partner** means CEH and any other person or entity approved by CEH, including the CEH Management Team that have experience and knowledge in developing and accessing business cases for energy efficiency and emission reduction opportunities, energy management strategy, carbon accounting specific to energy, energy policy, renewable energy procurement and circular economy methodologies, and must have skills, knowledge and experience in:

- (i) regulatory and compliance requirements for energy efficiency and emission reduction programs;
- (ii) financial modelling, planning and auditing;
- (iii) general knowledge of future energy technology, and

must not provide consultancy or other services to assist organisational plan scope and development.

- e. **Commencement Date** the date these terms and conditions are signed
- f. **Confidential Information** means the terms of this Agreement and all information of a confidential or sensitive nature (including Intellectual Property Rights), whether in writing or otherwise of or concerning a party or its Affiliates under, in contemplation of or in connection with this Agreement, the SEC Commitment, and the SEC Certification Rules, except for information that is in the public domain, or is intended to come into the public domain through the performance of an Agreement (other than through breach of an Agreement).
- g. **Consequential Loss** means in respect of a breach of this Agreement (including a breach of any warranty or indemnity) or event, fact, matter or circumstance giving rise to a claim:
  - i. any Cost suffered by a party that cannot reasonably be considered to arise naturally from that breach or event, fact, matter or circumstance;
  - ii. any and all consequential, special, indirect, exemplary or punitive Cost in relation to that breach or event, fact, matter or circumstance, even if such Cost could reasonably be considered to arise naturally from that breach or event, fact, matter or circumstance; and
  - iii. any and all loss of profit, loss of revenue, loss of goodwill, loss of opportunity, loss of a third-party contract, and loss of savings, even if such loss could reasonably be considered to arise naturally from that breach or event, fact, matter or circumstance, whether arising in contract, tort (including negligence) or equity or under statute.
- h. **Costs** means all expenses, claims, demands, loss, or other detriment, including legal costs on an indemnity basis.
- i. **Force Majeure Event** means any act, matter or circumstance that is beyond the reasonable control of a party, including but not limited to acts of God, invasion, riot, civil commotion, strike, lock-out, labour, disturbance, revolution, conspiracy, civil war, fire, epidemic, pandemic, trade restrictions, restrictions or restraint by any Government or other authority, or regulations imposed by any Government.
- j. **GST** means the same as the definition given to it in A New Tax System (Goods and Services) Tax Act 1999 (Cth).
- k. **Intellectual Property Rights** means all present and future rights, whether registered or unregistered or recorded or unrecorded, in or in relation to any copyright, design, patent, trade mark, (whether or not continued, registered, abandoned or withdrawn); trade, business, company or domain name; and know-how, inventions, processes, confidential information (whether in writing or recorded in any form), database rights or software, and any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields.
- l. **Lead SEC Manager** means your representative who is authorised to take action on behalf of you, as approved by SEC in writing.
- m. **Rules** refers to the Sustainable Energy Commitment Certification Rules

- n. **SEC Privacy Policy** means the privacy policy located at [www.sustainableenergy247.com](http://www.sustainableenergy247.com)
- o. In this document unless the context otherwise requires:
  - i. any terms that are not defined in clause 13 (Definitions) are given their meaning in Schedule 1 (Commercial Details).
  - ii. the singular includes the plural and vice versa;
  - iii. reference to a person includes any other entity recognised by law and vice versa;
  - iv. where a word or phrase is defined its other grammatical forms have a corresponding meaning;
  - v. any reference to a party to this document includes a party's legal personal representatives, heirs, successors and permitted assigns;
  - vi. an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
  - vii. an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally; and
  - viii. when a thing is required to be done or money required to be paid under this document on a day which is not a business day, the thing must be done and the money paid on the immediately preceding business day.
- p. **Site** individual listed property under the ownership of your registered business name
- q. **Software** is the MaxSE SEC software system
- r. **SEC** means Sustainable Energy Commitment, ACN 661 911 459

#### 4. Licence

- a. Subject to your compliance, and ensuring your Personnel comply with, this Agreement and the SEC Certification Rules, and your payment of the Fees, SEC grants to you a non-exclusive, non-transferable, revocable licence to:
  - i. use the Energy Management System, including the SEC Certification Framework, Transition Architecture & MaxSE Software (Software Licence),
  - ii. use, publish, and communicate the SEC Scoring Radar (schedule 6) from the point the foundation milestone is complete; and
  - iii. use, publish, and communicate the SEC Certification Trade Mark (Trade Mark Licence at the completion of Foundation); and

during the Term in accordance with this Agreement.

#### 5. Trade Mark Licence

- a. Trademark can only be utilised once a plan has been certified by SEC.
- b. You must only use the Trade Mark Licence in accordance with the SEC Certification Rules.
- c. You must only use the SEC Certification Trade Mark in the form presented at Schedule 2.  
You may:
- d. Include the SEC Certificate Trade Mark on your website with a description of the SEC Commitment as provided by SEC to you from time to time;
- e. include a hyperlink to the SEC website on your website; and
- f. use the SEC Certification Trade Mark in the email signatures your Personnel.
- g. You must not, and must procure your Personnel will not, reproduce, copy, distribute, modify, sell, license, or sublicense, the SEC Certification Trade Mark.

- h. SEC may at any time require you to remove, delete, change, or take down any material that makes the reference to SEC's name, business, or the SEC Certification Trade Mark, if SEC believes such material is adversely affecting SEC's reputation.

#### **6. Your Intellectual Property Rights**

- a. You grant to SEC a non-exclusive, royalty free licence to use your name and logo for the purpose of promoting SEC
- b. You grant to SEC a non-exclusive, perpetual, royalty free licence to use all information and data that you have uploaded or otherwise provided to the MaxSE for SEC to fulfil its commitment under this agreement, and in compliance with SEC Privacy Policy.
- c. The SEC is a globally recognised certification that is supporting energy users to transition and unlocking the value. You agree that your data is contributing to the improvement of the SEC product and services and certification more broadly. However, business will remain anonymous. Nothing in this Agreement transfers or assigns ownership of any SEC Intellectual Property Rights, including the MaxSE Software, to you or any other person.

#### **7. Certified Partner**

- a. You will be assigned a Certified Partner, who will manage your progress and compliance with the SEC Certification Rules, including providing you with technical support, assisting with your reporting and annual audits, and addressing any enquiries or concerns you may have relating to the SEC Software, the SEC Certification Framework, or the Transition Architecture.
- b. If at any time you are not satisfied with your Certified Partner, you must raise your concerns directly with SEC, and SEC will address your concerns by managing the performance of your Certified Partner, assign you a new Certified Partner, or take any other action necessary.

#### **8. Personnel**

- a. You must nominate a Lead SEC Manager, who will be the primary point of contact for SEC and your Allocated Partner in relation to any matters concerning this Agreement, the SEC Energy Management System, the SEC Certification Trade Mark and the SEC Certification Rules.
- b. You acknowledge and agree that you are responsible for yours and your Personnel's use of the SEC Energy Management System and the SEC Certification Trade Mark.
- c. You must ensure that your Personnel understand and accept the Software Terms prior to creating an Account.
- d. If required by SEC, you must supply information requested by SEC, including but not limited to the details of Personnel, and undertakings as to the conduct of such Personnel.
- e. You must immediately notify SEC if you suspect or becomes aware of misuse of the SEC Certification Trade Mark or SEC Energy Management System, or a breach of the Software Terms or applicable laws by your Personnel, or any other conduct that your Personnel may do to cause you to be in breach of this Agreement.
- f. SEC may, at any time and in its sole discretion, disable or suspend a Personnel's Account.
- g. You indemnify SEC for and against any acts or omissions by Personnel.

#### **9. Fees**

- a. You must pay the Fees in accordance with the Payment Terms, or as otherwise agreed between the parties from time to time.
- b. Direct Purchases. If Customer purchases directly from SEC, fees and any payment terms are specified in Customer's Order with SEC.
- c. Resellers. If Customer purchases through a Reseller, Customer must pay all applicable amounts directly to the Reseller, and Customer's order details (e.g., Products and Scope of Use) will be specified in the Order placed by the Reseller with SEC on Customer's behalf.
- d. Subject to clause 6.3, the Fees are fixed for the Term.
- e. SEC reserves the right to increase the Fees at any time by giving you prior written notice of such Fee increase (Fee Notice). On receipt of a Fee Notice, you may elect to terminate this Agreement by written notice to SEC within 20 business days
- f. You acknowledge and agree that if you do not respond to a Fee Notice within 20 business days of SEC providing a Fee Notice, this will be taken as acceptance of the increase in Fees, which will apply on and from the next date for payment.
- g. If SEC is unable to charge the credit card or bank account details provided by you after two attempts at 24-hour intervals, SEC will notify you that all Fees owing will constitute a debt immediately due and payable, and SEC reserves the right to suspend the all Accounts, the Trade Mark Licence, and the Software Licence unless and until the debt is paid. You indemnify SEC for all costs incurred in recovering such debt.
- h. Unless this Agreement states otherwise, each amount payable by a party under the Agreement in respect of a taxable supply by the other party is expressed as a GST exclusive amount and the recipient of the supply must, in addition to that amount, and at the same time, pay the GST payable in respect of the supply.

#### **10. Warranties**

- a. Each party represents and warrants to the other that:
  - i. it has full legal capacity and power to enter into this Agreement;
  - ii. it will perform its obligations under this Agreement in compliance with all applicable laws;
  - iii. it has all rights and consents to grant the licence contemplated in clause 2, and such licence does not and will not infringe the Intellectual Property Rights of any third party;
  - iv. it must not, and must ensure that none of its Affiliates, do anything that is defamatory, unlawful, offensive, or could lead to the other party's reputational loss or damage; and
  - v. it is not insolvent and no party has threatened taking any action which could result in insolvency under any applicable law.
- b. You warrant that you are solely responsible for backing up any information or data associated with your Accounts.

#### **11. Termination and Suspension**

- a. Either party may terminate this Agreement immediately upon notice to the other party (the Relevant Party) if:
  - i. the Relevant Party commits a material breach of the Agreement which is incapable of being remedied or, if the material breach is capable of being remedied, the Relevant Party fails to remedy the breach within 14 days after being required in writing to do so;

- ii. the Relevant Party or any of its employees, agents or representatives perpetrates an act or omission constituting fraud, wilful misconduct, or gross negligence in connection with this Agreement;
  - iii. the Relevant Party does anything that does or may adversely affect the reputation or goodwill of the other party; or
  - iv. the Relevant Party is or represents that it is insolvent, or has an administrator, liquidator or receiver appointed, or the Relevant Party enters or threatens to enter into bankruptcy.
- b. SEC may immediately terminate this Agreement, or suspend an Account, the Software Licence by notice to you if, as determined by SEC, in its sole discretion:
  - i. you have failed to pay the Fees in accordance with the Payment Terms;
  - ii. you have breached a term of this Agreement;
  - iii. you or your Personnel have breached a term of the Software Terms;
  - iv. you or your Personnel have used the SEC Energy Management System or the SEC Certification Trade Mark otherwise than for the purposes of, and in compliance with, this Agreement and the Certification Rules (as applicable);
  - v. any unauthorised users have accessed an Account; or
  - vi. such action is otherwise required by law or order of a court or relevant authority, without incurring any liability in respect of that termination or suspension.
- c. Upon suspension of this Agreement, SEC may take any action it deems reasonable, including:
  - i. suspending any or all Accounts;
  - ii. suspending any or all of the licences granted under clause 2; or
  - iii. change the Authorised User's status on the SEC Register to Pending Authorised User.
- d. Upon termination of this Agreement:
  - i. both parties must immediately cease using each other's Intellectual Property Rights, save for SEC's right to use your name or logo on the SEC Register and otherwise for the purposes of communicating previous Authorised Users;
  - ii. the Trade Mark Licence and Software Licence will be terminated;
  - iii. all Accounts will be disabled and you are solely responsible for backing up any of your data saved to the SEC Software;
  - iv. you must immediately cease using the SEC Certification Trade Mark and the SEC Energy Management System;
  - v. each party must return to the other party any Confidential Information, property and or materials obtained in the course of the Agreement; and
  - vi. you will:
    - 1. be liable to pay the Fees payable under this Agreement; and
    - 2. if terminated by SEC under clause 7.1 or 7.2, pay SEC any additional costs incurred from or in connection with such termination.

## **12. Confidentiality**

- a. Each party acknowledges that it may receive Confidential Information of the other party and agrees to keep that Confidential Information secret, to protect and preserve its confidential nature, and not use it or disclose it to any person (or allow or assist or make it possible for any person to observe or have access to it) without the written consent of the other party, except to the extent necessary to:
  - i. perform its obligations under or comply with this Agreement;

- ii. obtain professional advice in relation to this Agreement; or
  - iii. comply with disclosure obligations required by law, provided that the other party is given reasonable notice of the required disclosure.
- b. You may only disclose SEC's Confidential Information to your directors, officers and employees to the extent it is necessary for you comply with this Agreement, and any such disclosure must be subject to confidentiality restraints that are the same or greater than your obligations under this Agreement.
- c. You must take all precautions necessary to maintain secrecy and confidentiality and prevent disclosure of SEC's Confidential Information.

### **13. Liability**

- a. To the maximum extent permitted by law, SEC will not be liable for any loss, cost, damage, expense, or claim, suffered or incurred by you in connection with this Agreement.
- b. SEC's liability to you for any loss or damage however caused that you suffer or incur in connection with this Agreement is limited to the Fees paid by you in the 12-month period preceding the date on which any such claim for loss or damage arose.
- c. You indemnify SEC and its Affiliates from and against any loss, cost, expense or damage (including legal costs on a full indemnity basis) which is suffered or incurred by SEC or its Affiliates as a result of:
  - i. any breach of this Agreement or the SEC Certification Rules by you;
  - ii. any breach of the Software Terms by you or your Personnel;
  - iii. your fraud, wilful misconduct, or gross negligence; and
  - iv. any third-party action, claim, demand or proceedings instituted against SEC as a result of the use of the SEC Energy Management System or the SEC Certification Trade Mark by you or your Personnel.
- d. Neither party will be liable to the other party (whether in contract, tort, negligence, breach of statutory duty or otherwise) for any Consequential Loss suffered or incurred by the other party in connection with this Agreement.

### **14. Dispute Resolution**

- a. A party must not commence court proceedings in relation to a dispute arising under this Agreement until it has exhausted alternative dispute resolution procedures as set out in this clause, unless the party seeks urgent or injunctive relief.
- b. If a dispute arises between the parties arising out of or in connection with this Agreement, either party may give notice of the dispute to the other party (Dispute Notice). If a Dispute Notice is given:
  - i. the parties' representatives must negotiate in good faith as soon as possible in an attempt to resolve the dispute;
  - ii. if the dispute is not resolved within 7 days of the Dispute Notice being issued, the Managing Directors (or equivalent) of the parties must meet to resolve the dispute within 14 days; and
  - iii. if the dispute is not resolved within 21 days of the Dispute Notice being issued, the parties must agree to appoint an independent third party mediator to attempt to resolve the dispute by mediation and the parties must participate in the mediation in good faith. The costs of the mediation will be shared equally between the parties.
- c. All communications concerning negotiations made by the disputants in connection with this clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

## 15. General

- a. Force Majeure Event
  - i. A party is not in breach this Agreement and will not be liable to the other party for a delay or failure to perform an obligation to the extent it results from a Force Majeure Event.
  - ii. The party affected by the Force Majeure Event must notify the other party as soon as reasonably practicable and must take all reasonable steps to limit the effects of the Force Majeure.
- b. **Entire agreement:** This Agreement encompasses the entire understanding and agreement between the parties as to the subject matter of this Agreement and supersedes all prior discussions or agreements.
- c. **Governing Law & Jurisdiction:** This Agreement is governed by the laws of South Australia, Australia, and each party irrevocably submits to the non-exclusive jurisdiction of the courts of South Australia, Australia, and their courts of appeal.
- d. **Assignment & Novation:** You must not assign or novate your rights or obligations under this Agreement without the prior written consent of SEC. SEC may assign or novate its rights or obligations under this Agreement on notice to you.
- e. **Relationship of the parties:** Unless expressly stated otherwise this Agreement does not create a relationship of employment, trust, agency or partnership between the parties.
- f. **Severability:** Each provision of this Agreement is to be read and construed as a separate and severable provision or part of this Agreement and if any provision is void or unenforceable then that provision will be severed, and the remainder will be read and construed as though the severable provision does not exist or apply.
- g. **Variation:** An amendment or variation to this Agreement is not effective unless it is in writing and executed by the parties.
- h. **No Waiver:** A right or obligation under this Agreement may only be waived in writing by the party granting the waiver and is only effective to the extent set out in the written waiver.
- i. **Survival:** Any indemnity or obligation of confidence or any other term by its nature intended to survive termination under this agreement continues after termination or expiry of this Agreement.



## Schedule 2



**Certification Trade Mark** means including the tagline “A certified pathway for organisations to transition to sustainable energy’ attached next to, above or below the icon.