

Terms of Use

Thanks for using EarthCheck's benchmarking and certification program ("**Services**").

These Terms of Use ("**TOU**") contain the terms under which EarthCheck provides its Services to you and describe how the Services may be accessed and used. You indicate your agreement to these Terms by using the Services.

- 1. Fees for Services.** You agree to pay to EarthCheck the appropriate registration fee or renewal fee set out in the registration or renewal invoice for each Service you purchase or use. Fees paid by you are non-refundable, except as provided in these Terms or when required by law.
- 2. Provision of Information.** Upon receipt of the registration or renewal fee, EarthCheck agrees to provide the Services. Should the required benchmarking data not be provided by You, EarthCheck will be unable to deliver the intended output from the Services and EarthCheck is not obliged to refund to You any fees already paid. Earthcheck does not guarantee that You will achieve certification.
- 3. Privacy.** In the course of using the Services, you may submit content to EarthCheck (including your personal data and the personal data of others) (your "**Content**"). We know that by giving us your Content, you are trusting us to treat it appropriately. EarthCheck's Privacy Policy, together with any privacy statements and privacy notices (collectively, "**privacy policies**"), detail how we treat your Content and personal data and we agree to adhere to those privacy policies. You in turn agree that EarthCheck may use and share your Content in accordance with our privacy policies.
- 4. Confidentiality.** EarthCheck will treat your Content as confidential information and only use and disclose it in accordance with these Terms (including our privacy policies). However, your Content is not regarded as confidential information if such Content: (a) is or becomes public (other than through breach of these Terms by EarthCheck); (b) was lawfully known to EarthCheck before receiving it from you; (c) is received by EarthCheck from a third party without knowledge of breach of any obligation owed to you; or (d) was independently developed by EarthCheck without reference to your Content. EarthCheck may disclose your Content when required by law or legal process.
- 5. License to use Your Content.** You retain ownership of all of your intellectual property rights in your Content. You grant EarthCheck a worldwide, royalty free license to use, reproduce, distribute, modify, adapt, create derivative works, make publicly available, and otherwise exploit your Content, but only for the limited purposes of providing the Services.
- 6. EarthCheck IP.** Neither these Terms nor your use of the Services grants you ownership in the Services or the content you access through the Services (other than your Content). These Terms do not grant you any right to use EarthCheck's intellectual property, trademarks or other brand elements.
- 7. Third Party Resources.** EarthCheck may publish links in its Services to internet websites maintained by third parties. EarthCheck does not represent that it has reviewed such third party websites and is not responsible for them or any content appearing on them. Trademarks displayed in conjunction with the Services are the property of their respective owners.
- 8. Legal Compliance.** You must use the Services in compliance with, and only as permitted by, applicable law.
- 9. Your Responsibilities.** You are responsible for your conduct, Content, and communications with others while using the Services. You must comply with the following requirements when using the Services:
 - a. You may not purchase, use, or access the Services for the purpose of building a competitive product or service or for any other competitive purposes.

- b. Unless permitted by applicable law, you may not deny others access to, or reverse engineer, the Services, or attempt to do so.
 - c. You may not transmit any viruses, malware, or other types of malicious software, or links to such software, through the Services.
 - d. You may not use the Services to infringe the intellectual property rights of others, or to commit an unlawful activity.
 - e. Unless authorized by EarthCheck in writing, you may not resell or lease the Services.
- 10. Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED “AS IS” AND EARTHCHECK DOES NOT MAKE WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OR ANY REPRESENTATIONS REGARDING AVAILABILITY, RELIABILITY, OR ACCURACY OF THE SERVICES.
- 11. Exclusion of Certain Liability.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, EARTHCHECK, ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, AND LICENSORS WILL NOT BE LIABLE FOR (A) ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES WHATSOEVER, OR (B) LOSS OF USE, DATA, BUSINESS, REVENUES, OR PROFITS (IN EACH CASE WHETHER DIRECT OR INDIRECT), ARISING OUT OF OR IN CONNECTION WITH THE SERVICES AND THESE TERMS, AND WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, EVEN IF EARTHCHECK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- 12. Limitation of Liability.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE AGGREGATE LIABILITY OF EACH OF EARTHCHECK, ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, AND LICENSORS ARISING OUT OF OR IN CONNECTION WITH THE SERVICES AND THESE TERMS WILL NOT EXCEED THE LESSER OF: (A) THE AMOUNTS PAID BY YOU TO EARTHCHECK FOR USE OF THE SERVICES AT ISSUE DURING THE 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY; AND (B) AUD\$200.00.
- 13. Consumers.** We acknowledge that the laws of certain jurisdictions provide legal rights to consumers that may not be overridden by contract or waived by those consumers. If you are such a consumer, nothing in these Terms limits any of those consumer rights including any statutory consumer rights under the *Competition and Consumer Act 2010* (Cth).
- 14. Businesses.** If you are a business, you will indemnify and hold harmless EarthCheck and its affiliates, officers, agents, and employees from all liabilities, damages, and costs (including settlement costs and reasonable attorneys’ fees) arising out of a third party claim regarding or in connection with your or your end users’ use of the Services or breach of these Terms, to the extent that such liabilities, damages and costs were caused by you or your end users.
- 15. Governing Law.** Those terms are governed by the laws of the State of Queensland and each party submits to the non-exclusive jurisdiction of the state courts located in Queensland, Australia.
- 16. Assignment.** You may not assign these Terms without EarthCheck’s prior written consent, which may be withheld in EarthCheck’s sole discretion.
- 17. Entire Agreement.** These Terms (including the Additional Terms) constitute the entire agreement between you and EarthCheck, and they supersede any other prior or contemporaneous agreements, terms and conditions, written or oral concerning its subject matter.
- 18. Independent Contractors.** The relationship between you and EarthCheck is that of independent contractors, and not legal partners, employees, or agents of each other.
- 19. Interpretation.** The use of the terms “includes”, “including”, “such as”, and similar terms, will be deemed not to limit what else might be included. If you will be using the Services on behalf of an organization, you agree to these Terms on behalf of that organization and you represent that you have the authority to do so. In such case, “you” and “your” will refer to that organization.

- 20. No Waiver.** A party's failure or delay to enforce a provision under these Terms is not a waiver of its right to do so later.
- 21. Severability.** If any provision of these Terms is determined to be unenforceable by a court of competent jurisdiction, that provision will be severed and the remainder of terms will remain in full effect.
- 22. Survival.** The following sections will survive the termination of these Terms: 1, 2, 3, 5, 6, 10, 11, 12, 14, 15 and 19.