

TERMS OF SERVICE

This Beta Participation Agreement (Agreement) is between CSIRO and the Customer. By clicking the 'accept' button, the Customer accepts these Terms of Service (Terms) and agrees to be legally bound by this Agreement.

1. Definitions

Authorised Users means the Customer's Personnel who are authorised by the Customer to access and use the Services under the rights granted to the Customer pursuant to this Agreement.

Client means the Customer's clients who engage the Customer to provide a service using the Software.

Confidential Information means all information other than Personal Information in any form or media, which is by its nature confidential or which we identify as confidential and all copies, notes and records made of such information.

CSIRO means the Commonwealth Scientific and Industrial Research Organisation ABN 41 687 119 230, having its principal office at CSIRO Black Mountain Science and Innovation Park, Clunies Ross Street, Acton ACT 2601 Australia.

CSIRO Support Contact means AccurateEnterprise@csiro.au.

Customer means the individual that accepts these Terms or the employer or company that has authorised the individual to accept these Terms on behalf of them.

Data means the data or information uploaded onto the Portal by the Customer or created by the Customer in the Portal or Software.

Documentation means user manuals, technical manuals and any other materials provided by us, in electronic form, that describes the installation, operation, use or technical specifications of the Software.

IP means any rights in any existing or future copyright work (including computer programs, patentable invention, design, circuit layout, new plant variety, trademark, know-how or trade secret).

NatHERS Administrator means the Commonwealth department or agency which is responsible for administering the NatHERS Scheme, from time to time.

NatHERS Certificate means a unique certificate generated by the Software or generated with the results from the Software which indicates the thermal performance of a specified dwelling or plan for a dwelling.

NatHERS Scheme means the Nationwide House Energy Rating Scheme, which sets national standards for software used to rate the thermal performance capabilities of Australian homes.

Personal Information has the same meaning as given in the *Privacy Act 1988 (Cth)*.

Personnel means any officers, employees and contractors.

Portal means the web-based interface which gives access to a system developed by CSIRO comprising of the Software,

which will be managed by CSIRO and used by the Customer and Authorised Users.

Purpose means to model and publish the predicted energy use of residential buildings.

Services means collectively giving access to the Portal and the Software, maintaining the Software and providing Updates as set out in this Agreement.

Software means the beta version software known as 'AccuRate Enterprise'.

Updates means revised or new versions of the Software which provides for a technical improvement or error correction and which may provide additional functionality or performance, that CSIRO makes generally available.

'we', 'us' or 'our' means the CSIRO.

'you' or 'your' means the Customer.

2. CSIRO Services

2.1 CSIRO will provide you and Authorised Users with access to the Portal and the Data stored on the Portal for the Purpose.

2.2 CSIRO will use reasonable endeavours to maintain the availability of the Portal and the integrity of the Software but does not guarantee that:

- (a) there will be no technical interruptions to the Portal or bugs or errors in the Software;
- (b) all Data entered by Authorised Users will be uploaded to the Portal without error; or
- (c) the Data stored in the Portal will be accurate and complete.

2.3 Where you notify the CSIRO Support Contact of interruptions to the Portal or any errors or problems experienced by Authorised Users in using the Portal, then CSIRO will use reasonable endeavours to rectify any such interruptions, errors or problems as soon as possible. CSIRO will only provide such support services during its standard business hours.

2.4 CSIRO will be continuing to develop Updates to the Portal and may make such Updates available.

3. Access and Use of Portal

3.1 CSIRO will provide Authorised Users with the necessary access codes or passwords to enable them to access the Portal and use the Data stored on the Portal.

3.2 You must implement measures to ensure that any Authorised Users you have authorised to access the Portal are informed of their obligations under these Terms, including:

- (a) not to allow unauthorised persons to have access to the Portal or to any Data stored on the Portal;

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- (b) to notify you and CSIRO of any unauthorised access to the Portal or unauthorised use of any Data;
- (c) not to alter any Data that is stored on the Portal, with the exception that Authorised Users may enter and change their own Data for the Purpose;
- (d) not to use the Portal in any way that may impair the availability or accessibility to the Portal;
- (e) not to attempt to override any security or protective measures embedded in the Portal to protect the integrity of the Portal or to secure CSIRO's proprietary rights to the Portal; and
- (f) to comply with all reasonable directions given by CSIRO Personnel as to the use of any access codes, passwords or other security measures implemented by CSIRO to protect the integrity of the Portal.

3.3 You will comply with any reasonable request made by CSIRO to remove access to the Portal for any of your Authorised Users where CSIRO is of the opinion such Authorised Users have not complied with clause 3.2. CSIRO reserves the right to block access to the Portal where it detects it is not being used in accordance with clause 3.2

3.4 You must notify CSIRO of any interruptions to the Portal or of any errors or other problems experienced by your Authorised Users when using the Portal or the Software.

3.5 You agree to test and evaluate the Software as requested and described in any Documentation or instructions provided by us. You will promptly notify us of any functional flaws, errors, anomalies and problems directly or indirectly associated with the Software known to or discovered by you or your Authorised Users.

3.6 Any feedback, ideas, modifications, suggestions or improvements and the like made by you with respect to the Software (Supportive Information) will be the property of CSIRO. You agree to assign, and hereby assign, all right, title and interest worldwide in the Supportive Information and the related IP rights to us. We may disclose or use the Supportive Information for any purposes whatsoever without any obligation to you.

4. IP Rights to Portal and Software

4.1 The Portal and Documentation have been developed by CSIRO and CSIRO retains rights to IP in same.

4.2 You may use the Portal and Documentation for the Purpose and your internal evaluation and testing of the Software.

4.3 Nothing in this Agreement is to be construed as giving you a licence or other rights to the Portal, the

Documentation or the Software except as expressly set out in this Agreement. If you desire additional rights to the Portal, Documentation or the Software then this will be the subject of a separate written agreement between you and CSIRO.

5. Payment

There is no fee payable for your use of this Service but CSIRO reserves the right to charge a fee on reasonable notice to you.

6. Support and Management

6.1 We will provide you with basic software maintenance and support services. Any additional maintenance and support will be at our standard rates.

6.3 Maintenance and support services will include provision of Updates, upgrades, bug fixes, patches, and other error corrections as we make generally available free of charge to all Authorised Users of the Software then entitled to maintenance and support services.

6.4 We may develop and provide Updates in our sole discretion, and you agree that we have no obligation to develop any Updates at all or for particular issues.

6.5 You further agree that all Updates will be deemed Software, and related documentation will be deemed Documentation, and will be subject to these Terms.

6.6 We will publish Updates directly to the Portal.

6.7 Maintenance and support services do not include any new version or new release of the Software that we may issue as a separate or new product, and we may determine whether any issuance qualifies as a new version, new release, or Update in our sole discretion.

7. Use Restrictions

Without limiting these Terms, you agree:

- (a) not to attempt to obstruct, avoid, obscure or otherwise render ineffective any aspect of the Software, including by removing or avoiding security features, attributions, or legal terms that are notified to Authorised Users as part of accessing the Portal;
- (b) not to modify, translate, adapt or create derivative works or improvements to the Portal;
- (c) to notify us of any unauthorised access to or use of the Portal;
- (d) to comply with our reasonable directions about the use of any access codes, passwords or other security measures implemented by us to protect the integrity of the Portal;
- (e) not to use the Portal for any illegal, fraudulent or inappropriate purpose;
- (f) not to remove, alter or otherwise interfere with any warning or disclaimer statement affixed to,

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incorporated in or otherwise applied in connection with the Portal;

- (g) not to use the Portal or Documentation for purposes of competitive analysis of the Software, the development of a competing software product or service.

7. Management of Data

- 7.1 CSIRO does not give any guarantee that it will keep back-up copies of Data or at all and you agree that CSIRO will not be responsible for any loss of Data.
- 7.2 Where the Data includes Personal Information you must ensure that any Client has given all necessary consents to allow such Data to be stored on the Portal, accessed by your Authorised Users and by CSIRO Personnel for the Purpose.
- 7.3 In dealing with any Data, CSIRO will:
 - (a) where such Data is Personal Information, comply with the requirements of the *Privacy Act 1988 (Cth)*; and
 - (b) put in place appropriate security measures to ensure there is no unlawful or unauthorised access to the Data.

8. Confidential Information

- 8.1 Confidential Information is to be kept confidential.
- 8.2 You must promptly notify us if you: (a) become aware of any unauthorised disclosure of Confidential Information; or (b) are required by law to disclose any Confidential Information belonging to CSIRO.
- 8.3 You undertake to implement appropriate security practices to prevent any unauthorised copying, use or disclosure of the Confidential Information.
- 8.4 You may disclose the Confidential Information if required by law, but only to the extent of the legal requirement and after appropriate action is taken to protect the form and content of the disclosure.

9. Limitation of Liability

- 9.1 You acknowledge and agree that you are accessing a beta version of the Software, and by its nature the Software may contain errors, bugs and other problems and more or fewer features than subsequent commercial release versions. You further acknowledge and agree that the Software is not suitable for commercial use, and may contain errors affecting its proper operation, is not approved by the NatHERS Administrator and therefore cannot be used or relied on for the purpose of creating a NatHERS Certificate.
- 9.2 The Portal and Software is made available to you on an “as is” basis and “as available” basis without warranty of any kind including, without limitation, any representations regarding the accuracy of any

content or data or any warranties of merchantability, fitness for a particular purpose or non-infringement.

- 9.3 Because the Software is subject to change, we reserve the right to alter the Software at any time, and any reliance on the Software is at your own risk. You accept all risks and responsibility for losses, damages, costs and other consequences resulting directly or indirectly from using the Service and Software. You should use your own judgement and exercise caution where appropriate.
- 9.4 We do not give any guarantee that the Service or Software will always be available, uninterrupted, error-free, free from viruses or any other type of malicious code or computer program. The availability of, and access to, the Service and Software may be subject to Unexpected Events (see section 14 of these Terms), and any computer, communications, internet service or hosting facility failures or delays involving hardware, software, power or other systems not within our possession or reasonable control. We are not responsible for any delays, delivery failures or other damage resulting from such circumstances.
- 9.5 We may suspend, withdraw or restrict the availability of all or any part of the Service or Software for business and operational reasons. We will try to give you reasonable notice of any suspension, withdrawal or restriction by informing you via your registration email address or by providing a notice on the Portal.
- 9.6 We are not obligated to maintain the current or future functionality and may remove features of the Software from time to time.
- 9.7 CSIRO will not be liable to you for any loss of Data, information, revenue, profit or business opportunity or for any damage to goodwill or reputation which is suffered by you or a Client in any way arising from your use or the Clients use of the Services or Software.
- 10. Dispute Resolution
 - 10.1 Any dispute, controversy or claim arising out of or in connection with this Agreement, including its existence, breach, validity or termination (Dispute) must be dealt with in accordance with this clause. This clause does not prevent any of us from seeking urgent injunctive or similar interim relief from a Court.
 - 10.2 Any of us claiming that there is a Dispute must notify each other in writing and give details of that Dispute.
 - 10.3 If the Dispute is not resolved within 90 days from the date that the written notice of the Dispute is received, then the Dispute must be submitted to mediation in accordance with, and subject to, the Australian Disputes Centre (ADC) Rules. The mediation must take place in Melbourne, Australia and be administered by the Australian Disputes Centre (ADC).

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10.4 If the Dispute cannot be resolved within 90 days (unless this period is extended by our mutual agreement in writing) from the date it is submitted for mediation, then the Dispute must be resolved by arbitration in accordance with the ADC Arbitration Rules.

10.5 There is to be one arbitrator and the place of arbitration is Melbourne, Australia. All hearings will take place in private unless agreed otherwise in writing. The decision of the arbitrator (including any award as to costs) will be final and binding. CSIRO may, if required, disclose any information regarding the arbitration to its responsible government Minister, House of Parliament or a Committee of Parliament.

11. Term and Termination

11.1 This Agreement is effective until terminated by us in accordance with these Terms.

11.2 This Agreement terminates automatically when CSIRO releases a commercial version of the Software via the Portal (you should check the Updates periodically to see whether there has been a release). In these circumstances, your rights to access and use the Service will cease immediately.

11.3 We may terminate your right to use the Service at our discretion, by notifying you via your registration email address or by posting a notice on the Portal. Once you receive notification, you will have 30 days to continue using the Service before your rights to access the Service cease.

11.4 We may terminate your right to access the Service immediately if we believe that you are not complying with these Terms. In these circumstances, your rights to access and use the Service will cease immediately.

11.5 Termination does not affect or limit our ability to claim damages or other compensation for breach of these Terms or our rights at law, including for access and use of the Service without a valid licence. You agree that damages may not be appropriate as an exclusive remedy in respect of all breaches of these Terms and we will be entitled to seek and obtain an injunction to prevent any alleged breach of these Terms, in addition to any right to recover damages.

11.6 The following clauses survive termination of this Agreement: clause 4.1, 8, 9.1, 9.2, 9.3, 9.4, 9.7, 10, 11.5, 12 and 13.

12. Use of CSIRO Name

You must not use CSIRO's name or trademarks in a manner that suggests CSIRO endorses or is associated with your business, products or services.

13. General

13.1 This Agreement records our entire agreement and supersedes all earlier agreements and

representations that may have been made by CSIRO to you about the Services.

13.2 These Terms are governed by and construed in accordance with the laws of Victoria, Australia and you agree to submit to the jurisdiction of the courts in that State.

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

13.4 We may, at our discretion, make changes to these Terms from time to time. We will notify you of any changes made to these Terms via your registration email address or by providing a notice on the Portal. By continuing to access the Portal on or after the date that the change is notified to take effect, you accept the changes to the Terms.

13.5 Notwithstanding any provision in these Terms, we may assign or novate any of our rights and obligations under these Terms.

14. Unexpected Events

14.1 We are not liable for any delay or failure to perform our obligations under these Terms if such a delay is due to an Unexpected Event.

14.2 If a delay or failure by us to perform our obligations is caused or anticipated due to an Unexpected Event, the performance of our obligations will be suspended until the Unexpected Event has ended.

14.3 An Unexpected Event means a circumstance beyond our reasonable control which results in our being unable to observe or perform on time an obligation under these Terms. Such circumstance may include, but is not limited to, natural disasters, war, cyber and physical terrorism, riots, civil commotion, epidemic or pandemic, malicious damage, acts or requirements of government.