



Licence Agreement Guidance and Frequently Asked Questions

Version 1, December 2023

About the Licence Agreement

Climate Active is an Australian Government program that supports national climate policy by driving voluntary climate action by Australian businesses. The Climate Active Licence Agreement enables a business to certify against the Climate Active Carbon Neutral Standards.

To achieve Certification against the Climate Active Carbon Neutral Standard, the Responsible Entity must enter into a Licence Agreement with the Department of Climate Change, Energy, the Environment and Water (the Department). The Licence Agreement outlines the terms and conditions for achieving and maintaining Certification.

To ensure the integrity of instruments such as the Climate Active Carbon Neutral Certification, transparency for the community and of the Climate Active brand, certified Responsible Entities must comply with the requirements of the Licence Agreement.

Non-compliance of the terms and conditions outlined in the Licence Agreement could result in termination from the program.

About this document

Climate Active has prepared this document as guidance only.

This document should not be relied upon as legal advice. A Responsible Entity under the Licence Agreement should undertake its own due diligence relating to the terms and conditions of the Licence Agreement and seek its own advice for its respective obligations in accordance with the prescribed terms.

Document control

Date	Version	Changes
December 2023	1	First published version

Guidance and FAQs

Is the Licence Agreement a binding legal document?

Yes – the Responsible Entity is legally bound to the terms and conditions of the Licence Agreement, meaning they must be complied with as specified. The parties to the agreement are Climate Active (the Department) and the Responsible Entity.

Who is the Responsible Entity?

The Responsible Entity is generally the business seeking Certification. The Licence Agreement will be issued to the Entity that has applied for Certification, should the application be provided in-principal approval.

There may be instances whereby the Entity that has applied for Certification may not be the appropriate Entity to take legal responsibility for the Certification. In this instance an alternate Entity may be more appropriate to enter into the Licence Agreement. If this is the case, you can contact Climate Active to discuss.

See Licence Agreement glossary for the definition of the Responsible Entity.

Can a Responsible Entity make bespoke amendments to a Licence Agreement?

No – to ensure fairness, transparency, and consistency between our members, we are unable to make bespoke changes to the Licence Agreement. Should the Responsible Entity have specific queries about clauses within the Licence Agreement that are not explained within this document, please contact Climate Active.

What is the duration and expiry date of a Licence Agreement?

A Licence Agreement is valid for a minimum of 2 reporting periods and a maximum of 3 reporting periods from the date it is signed and returned to Climate Active.

Calculating the expiry date if adhering to the Financial Year reporting cycle

If a Licence Agreement is signed prior to 30 June of a calendar year (that is, 1 January – 30 June), then the expiration of the agreement will be on 30 June two years from that date.

*For example, The Responsible Entity signs its Licence Agreement on 15 April 2023.
The expiration of the agreement will be 30 June 2025.*

If a Licence Agreement is signed after 30 June of a calendar year (that is, 1 July – 31 December), then the expiration of the agreement will be on 30 June three years from the date.

For example, The Responsible Entity signs its Licence Agreement on 15 October 2023. The expiration of the agreement will be 30 June 2026.

Calculating the expiry date if adhering to the Calendar Year reporting cycle

Add two years to the date the Licence Agreement is signed. The expiration of the agreement will be the following 31 December from that date.

For example, The Responsible Entity signs its Licence Agreement on 15 October 2023. The expiration of the agreement will be 31 December 2025.

Survival of obligations

Under section 17.5, certain clauses survive the expiry, withdrawal or termination of the Licence Agreement.

Surviving obligations are contained in clauses of the Licence Agreement, which are:

- Clause 8: Reporting, audit and Notice obligations
- Clause 9: Certified Trade Mark licencing and use
- Clause 10.2: Disclosure of confidential information
- Clause 11: Payment of fees in accordance with the Fee Schedule
- Clause 13: Claims and injunctive relief
- Clause 14: Disclaimer
- Clause 15: Publication rights held by the Department
- Clause 17.5: Survival of obligations

By entering into a Licence Agreement, the Responsible Entity is bound to these obligations for the duration of the Licence Agreement at the time of execution.

Reporting deadlines

The Responsible Entity must comply with the reporting requirements set out in the Reporting Schedule of its Licence Agreement for each of its Certifications.

The Responsible Entity may choose its reporting cycle at the time of application. There are 2 possible reporting cycles:

- Calendar Year reporting cycle: 1 January – 31 December of each year; and
- Financial Year reporting cycle: 1 July – 30 June of each year.

The Responsible Entity is required to lodge annual reports in accordance with its reporting cycle. The due date for each reporting cycle is:

- Calendar Year reporting cycle: 30 April of each year, following the completion of the reporting cycle; and
- Financial Year reporting cycle: 31 October each year, following the completion of the reporting cycle.

The Responsible Entity must continue reporting on the selected reporting cycle as long as they maintain any Certifications. To switch reporting cycles, the Responsible Entity would need to terminate all its Certifications, apply for Certification again, and select the new reporting cycle.

If a Responsible Entity is thinking about changing reporting cycles, please contact Climate Active as there are several administrative tasks involved in doing so.

If the Responsible Entity does not adhere to the reporting deadlines relating to the reporting cycle chosen, the Responsible Entity risks being in breach of the Licence Agreement terms and conditions. Breaching the terms and conditions can lead to issuance of non-compliance notices and risks the status of the Responsible Entity's Certifications. Continued non-compliance could result in termination from the program.

The Responsible Entity's submission of completed reporting documents must be done so in accordance with the requirements of its validation schedule and the applicable Standard to ensure it is compliant with the terms of the Licence Agreement.

Requesting a reporting deadline extension

Climate Active may provide formal extensions totalling a maximum of 60 days beyond the annual reporting deadline. This may consist of a single or multiple extension requests, provided they do not accumulate to a total of more than 60 days.

Extension requests must be submitted via the user Portal, for each Certification requiring an extension, within 30 days of the annual reporting deadline.

Can a Responsible Entity withdraw from a Licence Agreement?

Should the Responsible Entity wish to withdraw from its Licence Agreement, it may do so by providing Climate Active with written Notice via email, as per clause 17.4 of the Licence Agreement.

Withdrawal takes effect 30 business days after the date the Responsible Entity provides Notice of intent to withdraw as per clause 12.1 of the Licence Agreement. Upon receiving written Notice of intent to withdraw, Climate Active will action as appropriate and provide a formal notice of withdrawal letter to the Responsible Entity. This notice outlines the effective withdrawal date and any outstanding obligations the Responsible Entity needs to undertake to close out participation.

Can Climate Active terminate a Licence Agreement?

Climate Active may issue the Responsible Entity with a Notice pursuant to clause 12.2 of the Licence Agreement, effectively terminating the Responsible Entity from the program.

Climate Active may, at its discretion, terminate the Responsible Entity for failures to comply with the terms and conditions of the Licence Agreement (for example, not completing annual reporting requirements), or if the Responsible Entity no longer meets requirements under the Standard.

A Notice outlines the effective termination date and any outstanding obligations the Responsible Entity needs to undertake to close out participation. A Notice will terminate all Certifications the Responsible Entity holds, including the right to use the Certified Trade Mark.

Register of non-compliance

If a previously certified Responsible Entity does not comply with the requirements by the respective dates as outlined in a Withdrawal or Termination Notice issued to them, Climate Active may exercise powers pursuant to clause 12.4 of the Licence Agreement.

Climate Active may record the previously certified Responsible Entity's non-compliance with the Licence Agreement at our discretion on a non-compliance register that we maintain which may be made publicly available.

Climate Active, at its discretion, may also record a Responsible Entity on the register for any non-compliance pursuant to the terms and conditions of the Licence Agreement. It is critical that formerly certified Responsible Entities recognise that any past claim of being carbon neutral made under its Climate Active certification may be considered misleading in accordance with Australian Competition and Consumer Commission (ACCC) guidelines, should obligations for those reporting periods not be satisfied.

Audit obligations

Pursuant to clause 8.2 of the Licence Agreement, a Responsible Entity may be subject to audits or verifications that ensure compliance with the Licence Agreement terms and conditions and the relevant Climate Active Carbon Neutral Standards for the Certifications held. A Responsible Entity must maintain appropriate records of how the carbon account was created for auditing purposes.

Pursuant to clause 10.1 of the Licence Agreement, Climate Active has the right to obtain copies of documentation that the Responsible Entity, its subcontractors, and Affiliate Entities hold, which relate to the carbon neutral certification, assessment, monitoring and independent audit of the certification.

Records must be kept by the Responsible Entity for 7 years after the end of the Certification period.

Does a Licence Agreement allow the Responsible Entity use of the Climate Active Certification Trade Mark?

Upon execution of a Licence Agreement, and the issuance of a Notice of Certification letter, the Responsible Entity may seek approval for use of the Climate Active Certification Trade Mark consistent with the relevant Standard for its Certification.

Details on the requirements and process for obtaining approval to use the Certification Trade Mark are available within the [Certification Trade Mark User Guide](#).

Misuse of the Certification Trade Mark may mean the Responsible Entity is in breach of the terms and conditions of the Licence Agreement. Continued misuse of the Certification Trade Mark could result in termination from the program.

Affiliate use of the Climate Active Certification Trade Mark under a Licence Agreement

Pursuant to clause 9.5 of the Licence Agreement, an Affiliate Agreement may allow a business connected to the Responsible Entity to make use of the Climate Active Certification Trade Mark in certain circumstances. This is facilitated through an [Affiliate Agreement](#).

The Responsible Entity should consider the below examples to determine when an Affiliate Agreement may be required. The Responsible Entity must discuss the business connection, eligibility and requirements of an Affiliate Agreement with Climate Active before providing the affiliate entity with any Climate Active materials, including but not limited to the Certification Trade Mark.

Passive uses of the Certification Trade Mark

An Affiliate Agreement is not needed where another business entity only uses the Certification Trade Mark 'passively'. For example, if a coffee business has a coffee product certified under Climate Active and includes the Certification Trade Mark on their packets, a separate supermarket business would not need to enter an affiliate agreement just to stock those packets on their shelves.

Active uses of the Certification Trade Mark

Further to the above example, if the supermarket 'actively' used the Certification Trade Mark (such as if the supermarket put the Certification Trade Mark on their own poster, which they displayed on the shelves adjacent to the coffee to support the claim that the coffee is carbon neutral) then they would need to enter into an Affiliate Agreement. If the supermarket conveyed that the coffee product itself was carbon neutral without using the Certification Trade Mark, an Affiliate Agreement would not be needed.

Downstream businesses use of the Certification Trade Mark

Downstream businesses in a supply chain cannot not use the Certification Trade Mark to claim that their own activities are also certified. For example, the supermarket could not claim that their operations selling the certified coffee product are also carbon neutral. To make the claim that their operations in selling the product are certified as carbon neutral, the supermarket would need to achieve their own carbon neutral certification through Climate Active.

White label products and the Certification Trade Mark

In the case of a rebranded 'white label' certified product, the business that rebrands and sells the product as carbon neutral could enter into an Affiliate Agreement to use the Certification Trade Mark on that product. Entering into an Affiliate Agreement in this scenario would only be possible if the certification for the 'white label' product included any additional emissions associated with rebranding the product and, in addition, the new brand was listed in the Public Disclosure Statement associated with the product.

Legally connected businesses and the Certification Trade Mark

If a business (Business A) has a separate ABN to another business (Business B) that has been certified by Climate Active as a carbon neutral organisation, and Business A is legally connected to Business B (that is, is a subsidiary), then an Affiliate Agreement is not needed for Business A to use the Certification Trade Mark if two conditions are met:

Business A must have its relevant emissions explicitly included in Business B's carbon neutral certification (with the name of the subsidiary entity/trading name/brand name listed in the certification's Public Disclosure Statement); and

Business A must be listed on the 'Schedule of Certifications' on the 'Notice of Certifications', which would be provided to Business B when they became certified by Climate Active.

How to apply for an Affiliate Agreement

After certification has been achieved, a Responsible Entity can nominate a third party as an affiliate to Climate Active in writing. Climate Active will then review the nomination and issue the Responsible Entity with an 'Affiliate Agreement' document, which is to be returned to Climate Active once signed.