

## Carbon Responsible Terms and Conditions of Use

### Summary of key features:

- All use of Carbon Responsible products and services are governed by the following terms and conditions of use, which form the agreement between Carbon Responsible and its users, both for services provided free for use or as paid for services.
- Carbon Responsible separately provides privacy terms that cover the use of data and customer information and related obligations for users and Carbon Responsible.
- The API and calculators are available for commercial use by third parties subject to pre agreed commercial terms.
- Carbon Responsible through use of its logo, name and/or url shall be acknowledged in any onward use of data derived from its products.
- Users may not attempt to replicate or reproduce the core functions of the API or calculators, without written permission from Carbon Responsible.
- Caching of data from the API outside any single 24 hour period is not permitted.
- Users are entirely responsible for their use of the output data they derive from Carbon Responsible API and calculators and the accuracy of their input data.
- Carbon Responsible will keep its products and services updated in line with methodology and conversion factors that it provides for users.
- Carbon Responsible will provide maintenance for its services during UK working hours, and/or where required as part of its performance of these terms and conditions.

### The Full Terms and Conditions.

The following terms and conditions apply to the use of Carbon Responsible calculators and API. Your use of Carbon Responsible calculators and API is subject to the following agreement. Please read carefully and check the acceptance box if you agree to these terms and conditions.

### DATE 14 JANUARY 2020

1. Carbon Responsible Limited, a company incorporated in England and Wales (registration number 7954643) having its registered office at Unit 2, Uffcott Farm, Uffcott, Wilts SN49NB , hereinafter referred to as "**Carbon Responsible**"; and You, "The User" of any product of Carbon Responsible being hereinafter referred to as, "**the User**". Online acceptance of these terms will apply to the User and Carbon Responsible as follows:

#### AGREEMENT

##### 1. Definitions

- 1.1 In this Agreement, except to the extent expressly provided otherwise:
  - "**Agreement**" means this agreement including any Schedules, and any amendments to this Agreement from time to time;
  - "**Business Day**" means any weekday other than a bank or public holiday in England.
  - "**Business Hours**" means the hours of [09:00 to 17:00 GMT/BST] on a Business Day;

**"Caching"** means the retention of data from Carbon Responsible API and calculators by the User, except as provided for in this agreement.

**"Charges"** means the following amounts:

- (a) The charges for our services are as governed by our prevailing tariff and individual tariff agreements between the company and users of its services.
- (b) Such amounts as may be agreed in writing by the parties from time to time; and
- (c) Amounts calculated based upon quantity of data usage by the User.

**"Documentation"** means the documentation for the API and calculators produced by Carbon Responsible and delivered or made available by Carbon Responsible to the User;

**"Effective Date"** means the date of acceptance of these terms either online or in writing;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs)];

**"Maintenance Services"** means the supply of services to the User or Maintenance and Product Updates and Upgrades;

**"Minimum Term"** means, a minimum period of 12 months beginning on the first date of live usage by the User;

**"Release"** means, in respect of an Update or Upgrade, the release of that Update or Upgrade (as the case may be) to the customers of Carbon Responsible generally and **"Released"** shall be construed accordingly);

**"Schedule"** means any schedule attached to the main body of this Agreement;

**"Services"** means any services that Carbon Responsible provides to the User, or has an obligation to provide to the User, under this Agreement;

**"Software"** means the online carbon calculators and API provided to the User for the purposes of calculating carbon emissions from input data supplied by the User. The software uses third party data sets that do not form part of the defined software for the purposes of this agreement, but are used by Carbon Responsible to support the Carbon Responsible software, in areas including but not limited to, distance calculation, vehicle registration and other third party datasets that support the measurement capability of the software.

**"Software Defect"** means a defect, error or bug in the Software having an adverse effect OR a material adverse effect on the appearance, operation, functionality or performance of the Software, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the User or any person authorised by the User to use the Software, including but not limited to the sharing of passwords issued by Carbon Responsible and associated usernames;
- (b) any use of the Software contrary to the Documentation by the User or any person authorised by the User to use the Software;
- (c) a failure of the User to perform or observe any of its obligations in this Agreement; and/or
- (d) an incompatibility between the Software and any other system, network, application, program, hardware or software not specified as compatible in the Software Specification;

**"Software Specification"** means the documentation provided for the software as issued to the User and updated on its website from time to time.

**"Term"** means the term of this Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

**"Update"** means a hotfix, patch or minor version update to the Software; and

**"Upgrade"** means a major version upgrade of the Software.

## **2. Term**

2.1 This Agreement shall come into force upon the Effective Date, being the date of acceptance of these terms and conditions by the User.

2.2 This Agreement shall continue in force indefinitely, subject to termination in accordance with Clause 14 or any other provision of this Agreement.

## **3. Supply of Software**

3.1 Carbon Responsible shall make the Software available for access by the User during the whole of the period of 10 Business Days following the Effective Date, and shall provide to the User such assistance in relation to the use of the Software as he User may reasonably request.

## **4. Licence**

4.1 Carbon Responsible hereby grants to the User from acceptance of these terms until the end of the term:

- (a) access to its software through its website, third party websites or directly via its API;
- (b) access to its software for the purposes of calculating carbon emissions from the input data provided by the User;

- (c) to acknowledge Carbon Responsible through use of its name and/or logo as the source of any calculations provided by the User to its customers and related third parties from use of the software.

subject to the limitations and prohibitions set out and referred to in this Clause 4.

- 4.2 The User may not sub-license the rights granted in Clause 4.1 to any party for the purposes of supporting the User's use of the Software in accordance with this Agreement. Any such sub-licence that may be granted separately shall automatically terminate upon the termination of the licence in Clause 4.1.
- 4.3 Any licence granted by Carbon Responsible to the User in Clause 4.1 is subject to the limitations regarding, access by password to a single person in its business and onward provision of the software to third parties.
- 4.4 The Software may only be used by the officers and employees of the User.
- 4.5 Save to the extent expressly permitted by this Agreement or required by applicable law on a non-excludable basis, any licence granted under this Clause 4 shall be subject to the following prohibitions:
  - (a) The User must not sell, resell, rent, lease, loan, supply, publish, distribute or redistribute the Software without prior written permissions from Carbon Responsible;
  - (b) The User must not alter, edit or adapt the software.
  - (c) The User must not decompile, de-obfuscate or reverse engineer, or attempt to decompile, de-obfuscate or reverse engineer, the Software.
  - (d) The user may not employ caching of data from the software for more than any single 24 hour period.
- 4.6 The User shall be responsible for the security of usernames and passwords for the Software supplied to the User under this Agreement and shall use all reasonable endeavours to ensure that access to such usernames and passwords is restricted to persons authorised to use them under this Agreement.

## **5. Maintenance Services**

- 5.1 The Carbon Responsible shall provide the Maintenance Services of the Software to the User during the Term.
- 5.2 Carbon Responsible shall provide the Maintenance Services with reasonable skill and care.
- 5.4 Carbon Responsible warrants to the User that the application of Updates and Upgrades to the Software by the Carbon Responsible will not introduce any known Software Defects into the Software.
- 5.5 Carbon Responsible warrants to the User that the application of Updates and Upgrades to the Software will be provided with prior advice.
- 5.6 The Carbon Responsible may suspend the provision of the Maintenance Services if any amount due to be paid by the User to the Carbon Responsible under this Agreement is overdue, and the Carbon Responsible has given to the User at least 30 days written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services on this basis.
- 5.7 If Carbon Responsible stops or makes a good faith decision to stop providing maintenance services in relation to the Software to its customers generally, then the Carbon Responsible may terminate the Maintenance Services by giving at least 45 days written notice of termination to the User.

## **6. The User obligations**

- 6.1 The User must provide to Carbon Responsible, or procure for Carbon Responsible, such access to The User's computer hardware, software, networks and systems as may be reasonably required by Carbon Responsible to enable the Carbon Responsible to perform its obligations under this Agreement.

## **7. No assignment of Intellectual Property Rights**

- 7.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from Carbon Responsible to the User, or from the User to Carbon Responsible.

## **8. Charges**

- 8.1 The User shall pay the Charges to Carbon Responsible in accordance with this Agreement and as agreed with the User in writing or through its acceptance of the prevailing tariffs published by Carbon Responsible from time to time..
- 8.2 If the Charges are based in whole or part upon the time spent by the Carbon Responsible performing the Services, the Carbon Responsible must obtain the The User's written consent before performing Services that result in any estimate of time-based Charges given to the The User being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the The User agrees otherwise in writing, the User shall not be liable to pay to Carbon Responsible any Charges in respect of Services performed in breach of this Clause 8.2.
- 8.3 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, are exclusive of any applicable value added taxes, which will be added to those amounts and payable by the User to Carbon Responsible.
- 8.4 Carbon Responsible may elect to vary any element of the Charges by giving to the User not less than 30 days written notice of the variation expiring on any anniversary of the date of execution of this Agreement, providing that no such variation shall constitute a percentage increase in the relevant element of the Charges that exceeds 5% over the percentage increase, since the date of the most recent variation of the charges.

## **9. Payments**

- 9.1 Carbon Responsible shall issue invoices for the Charges to the User monthly based upon data usage for the API or other paid services offered by Carbon Responsible via its websites.
- 9.2 The User must pay the Charges to Carbon Responsible within the period of 15 days following the issue of an invoice in accordance with this Clause 9.
- 9.3 The User must pay the Charges by bank transfer (using such payment details as are notified by Carbon Responsible to the User from time to time).
- 9.4 If the User does not pay any amount properly due to the Carbon Responsible under this Agreement, Carbon Responsible may:
  - (a) charge the The User interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time, which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month.
  - (b) immediately terminate or suspend access to the software without further notice and without penalty from the User.

## **10. Warranties**

- 10.1 Carbon Responsible warrants to the User that:
  - (a) Carbon Responsible has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
  - (b) Carbon Responsible will comply with all applicable legal and regulatory requirements applying to the exercise of the Carbon Responsible's rights and the fulfilment of the Carbon Responsible's obligations under this Agreement; and
  - (c) Carbon Responsible has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.
- 10.3 Carbon Responsible warrants to the User that the Software, when used by the User in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under English law.
- 10.5 Carbon Responsible reasonably determines, or any third party alleges, that the use of the Software by the User in accordance with this Agreement infringes any person's Intellectual Property Rights], Carbon Responsible may at its own cost and expense:
  - (a) modify the Software in such a way that it no longer infringes the relevant Intellectual Property Rights, providing that any such modification must not introduce any Software Defects into the Software and must not result in the Software failing to conform with the Software Specification; or
  - (b) procure for the The User the right to use the Software in accordance with this Agreement.
- 10.6 The User warrants to Carbon Responsible that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 10.7 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

## **11. Acknowledgements and warranty limitations**

- 11.1 The User acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, Carbon Responsible gives no warranty or representation that the Software will be wholly free from defects, errors and bugs.
- 11.2 The User acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, Carbon Responsible gives no warranty or representation that the Software will be entirely secure.
- 11.3 The User acknowledges that the Software is only designed to be compatible with that software specified as compatible in the Software Specification; and the Carbon Responsible does not warrant or represent that the Software will be compatible with any other software.
- 11.4 The User acknowledges that the Carbon Responsible will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Software; and, except to the extent expressly provided otherwise in this Agreement, Carbon Responsible does not warrant or represent that the Software or the use of the Software by the User will not give rise to any legal liability on the part of the User or any other person.

## **12. Limitations and exclusions of liability**

- 12.1 Nothing in this Agreement will:
  - (a) limit or exclude any liability for death or personal injury resulting from negligence;
  - (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
  - (c) limit any liabilities in any way that is not permitted under applicable law; or
  - (d) exclude any liabilities that may not be excluded under applicable law.
- 12.2 The limitations and exclusions of liability set out in this Clause 12 and elsewhere in this Agreement:
  - (a) are subject to Clause 12.1; and
  - (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.
- 12.3 Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings.
- 12.4 Carbon Responsible shall not be liable to the User in respect of any loss of revenue or income.
- 12.5 Carbon Responsible shall not be liable to the User in respect of any loss of use or production.

- 12.6 Carbon Responsible shall not be liable to the User in respect of any loss of business, contracts or opportunities.
- 12.7 Carbon Responsible shall not be liable to the User in respect of any loss or corruption of any data, database or software.
- 12.8 Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.

**13. Force Majeure Event**

- 13.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement[ (other than any obligation to make a payment)], that obligation will be suspended for the duration of the Force Majeure Event.
- 13.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:
  - (a) promptly notify the other; and
  - (b) inform the other of the period for which it is estimated that such failure or delay will continue.
- 13.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

**14. Termination**

- 14.1 Carbon Responsible may terminate this Agreement by giving to the User not less than 30 days written notice of termination, expiring after the end of the Minimum Term.
- 14.2 The User may terminate this Agreement by giving to the Carbon Responsible [not less than 30 days'] written notice of termination[, expiring [at the end of any [calendar month]] OR [after the end of the Minimum Term]].
- 14.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
  - (a) the other party commits any material breach of this Agreement, and the breach is not remediable;
  - (b) Either party commits a material breach of this Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied]; or
  - (c) the other party persistently breaches this Agreement irrespective of whether such breaches collectively constitute a material breach.
- 14.4 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
  - (a) the other party:
    - (i) is dissolved;
    - (ii) ceases to conduct all (or substantially all) of its business;
    - (iii) is or becomes unable to pay its debts as they fall due;
    - (iv) is or becomes insolvent or is declared insolvent; or
    - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
  - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
  - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement; or
- 14.5 Carbon Responsible may terminate this Agreement immediately by giving written notice to the User if:
  - (a) any amount due to be paid by the User to the Carbon Responsible under this Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
  - (b) Carbon Responsible has given to the The User at least 30 days written notice, following the failure to pay, of its intention to terminate this Agreement in accordance with this Clause 14.5.

**15. Effects of termination**

- 15.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): [Clauses 1, 9.2, 9.4, 12, 15, 18 and 19].
- 15.2 Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.
- 15.3 Within 30 days following the termination of this Agreement for any reason:
  - (a) The User must pay to Carbon Responsible any Charges in respect of Services provided to the The User before the termination of this Agreement and in respect of licences in effect before the termination of this Agreement]; and
  - (b) Carbon Responsible must refund to The User any Charges paid by the User to Carbon Responsible in respect of Services that were to be (but are not) provided to the User after the termination of this Agreement and in respect of licences that were to be (but are not) in effect after the termination of this Agreement, without prejudice to the parties' other legal rights.

- 15.4 For the avoidance of doubt, the licences of the Software in this Agreement shall terminate upon the termination of this Agreement; and, accordingly, the User must immediately cease to use the Software upon the termination of this Agreement.
- 15.5 Within 10 Business Days following the termination of this Agreement, the The User shall:
- (a) dispose of as Carbon Responsible may instruct all media, data and passwords in its possession or control relating to the Software;
- and if Carbon Responsible so requests the User shall procure that a director of the User certifies to Carbon Responsible, in a written document signed by that person and provided to Carbon Responsible within 5 Business Days following the receipt of Carbon Responsible's request, that the User has fully complied with the requirements of this Clause 15.5.
- 16. Notices**
- 16.1 Any notice from one party to the other party under this Agreement must be given by one of the following methods using the relevant contact details set out in Clause 16.2):
- (b) sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting,
- providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.
- 17. General**
- 18.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.
- 18.2 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 18.3 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 18.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.
- 18.5 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 18.6 Subject to Clause 12.1, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 18.7 This Agreement shall be governed by and construed in accordance with English law.
- 18.8 The courts of England shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.
- 19. Interpretation**
- 19.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
  - (b) any subordinate legislation made under that statute or statutory provision.
- 19.2 The Clause headings do not affect the interpretation of this Agreement.
- 19.3 References in this Agreement to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.
- 19.4 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

I have read and fully understand the above terms and conditions and accept these conditions in their entirety, as forming the sole basis of my/our use of Carbon Responsible software and services.