

Carbonwise - Terms of Service v1.1

These Terms of Service (**Terms**) govern the purchase of an online order (**Subscription**) by you (**You** or **Customer**) to access and use the Carbonwise service (**Service**) provided by Elcom Systems Limited (**Elcom** or **Supplier**). Together, the Terms and the Subscription form the agreement (**Agreement**) between the Supplier and the Customer.

BY USING THE SERVICE, YOU AGREE TO BE BOUND BY THESE TERMS. PLEASE READ THESE TERMS CAREFULLY. IF YOU DO NOT AGREE TO BE BOUND BY ANY OF THESE TERMS, YOU MUST NOT USE THE SERVICE.

THE PROVISION OF THE SERVICE BY THE SUPPLIER DOES NOT, AND IS NOT INTENDED TO, CONSTITUTE THE PROVISION BY THE SUPPLIER OR ITS LICENSORS OF LEGAL OR REGULATORY ADVICE, SUPPORT OR RELATED SERVICES. CUSTOMERS REQUIRING SUCH ADVICE, SUPPORT OR SERVICES SHOULD CONTACT A RELEVANT, SPECIALIST LEGAL ADVISER.

If you are entering into these Terms on behalf of the Customer, you represent and warrant that you have the authority to bind the Customer and all Users of the Service.

The Supplier may change these Terms at any time with or without notice by updating them on its website at <https://carbonwise.elcom.com/>. Please check the Terms regularly to take note of any changes.

Elcom Systems Limited is a company incorporated and registered in England and Wales (company number 02838561) with the registered address at Orion House, 5 Upper St. Martin's Lane, London EC2H 9EA.

1. SERVICE

- 1.1 These Terms set out the contractual terms and conditions which govern the supply, receipt and use of the Service.
- 1.2 **Term of the Subscription.** Upon purchasing a Subscription, the Supplier shall grant the Customer access to the Service from the date and for the initial period set out in the Subscription form (**Initial Term**) which, together with any renewal period of twelve (12) calendar months (**Renewal Term**) shall comprise the **Subscription Term**.
- 1.3 **Provision of Service.** The Supplier shall, during the Subscription Term, use reasonable endeavours to make the Service available 24 hours a day seven days a week, except for periods of: (a) planned maintenance and (b) unscheduled maintenance. All planned maintenance work will be carried out

outside of the hours of 9am – 5pm on working days i.e. days other than Saturday, Sunday or public holidays when banks in London are open for business (**Business Days**). Time for performance of the Service shall not be of the essence.

- 1.4 **Service Improvements.** the Customer acknowledges that the Supplier may change or modify the Service from time to time. The Supplier shall use reasonable endeavours to notify the Customer if a change to the Service will materially and/or detrimentally affect the Customer's use of the Service.

2. MINIMUM REQUIREMENTS

- 2.1 The Customer acknowledges that it must maintain an internet connection to be able to access the Service. The Supplier does not warrant that the Service will be optimised for mobile devices.

3. SUPPORT

- 3.1 **It is the Customer's responsibility to understand the Service.** The Service is designed for ease of use. Tutorial materials (**Documentation**) may be provided at <https://carbonwise.elcom.com> and updated from time to time. The Customer agrees that it is the Customer's responsibility to ensure that any Users (as defined in paragraph 4.3) accessing and using the Service is appropriately trained to do so. The Supplier will provide reasonable technical support. Third party specialist advice relating to carbon emissions tracking may also be made available from time to time as an additional service at the additional cost identified from time to time at <https://carbonwise.elcom.com/>.

4. ACCESS

- 4.1 Subject to the payment of the fees set out in paragraph 11 (**Fees**), the Supplier grants the Customer a non-exclusive, non-transferable, non-sub-licensable and revocable right to access and permit Users to access and use the Service and Documentation during the Subscription Term on the terms of the Agreement.
- 4.2 **Limitations on Use.** The rights provided under these Terms are granted to the Customer only and to any subsidiary, affiliate or holding company of the Customer or any other party, unless otherwise agreed by the Supplier in writing.
- 4.3 The Customer may provide access to the Service to: (a) its officers, employees and/or consultants; and (b) the Customer's third-party partners (each a User and, collectively, Users). The Customer undertakes that it shall be liable to the Supplier in respect of the acts, omissions and breaches of these Terms by the Users as if those acts, omissions and breaches were the

Customer's own.

5. SUPPLIER OBLIGATIONS

- 5.1 The Service and the calculations which it may provide are provided on an 'as is' and 'as available' basis. The Supplier shall perform the Service with reasonable skill and care.
- 5.2 If in the reasonable opinion of the Supplier, the Service is not provided with reasonable skill and care, the Supplier will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly. Any such correction or remedy provided under this paragraph 5.2 constitutes the Customer's sole and exclusive remedy for any failure by the Supplier to provide the Service with reasonable skill and care.
- 5.3 The Supplier shall have no liability to the Customer to the extent that any fault, failure, non-conformance or loss of Service is caused by:
(a) misuse, incorrect or unauthorised use of the Service; (b) failure of the Customer hardware, software and/or infrastructure or any part thereof; (c) use of the Service other than in accordance with guidance provided by the Supplier or use of the Service in combination with any hardware, software or systems not approved by the Supplier; (d) any breach of the Terms by the Customer and/or its Users; and (e) any corrupt data, viruses, worms and any other computer programs or code which might be used

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to access, modify, delete, damage, corrupt, deactivate, disable, disrupt, or otherwise impede in any manner the operation of any of the Customer software, hardware, data or property.

- 5.4 The Supplier: **(a)** does not warrant that the Customer's use of the Service will be uninterrupted or error-free; **(b)** does not warrant that the Service, Documentation and/or the information obtained by the Customer through the Service will meet the Customer requirements and shall have no liability for: (i) any inaccuracy, error or omission of any data or information entered into the Service by the Customer or any User; (ii) any loss of or corruption of any data entered by the Customer and the calculated responses provided by the Service **(Data)**; (c) does not give any warranty or endorsement in relation to any third party advertising on the Supplier's website; (d) is not responsible for any delay or inability to use or access the Service or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, howsoever caused.
- 5.5 The commitments set out in this clause are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, which are expressly denied to the fullest extent permitted by law.

6. INTEGRATION WITH THIRD PARTIES

- 6.1 **Third Party Service / Integration.** The Supplier offers integration services and functionality using third party developer tools such as application programming interfaces **(APIs)** and Stripe **(Integration Services)**. The Integration Services may be subject to third party terms and conditions containing restrictions on access, storage and use of information. The Customer's use of the Integration Services is on an "as is" basis and without any warranty of any kind. The Customer acknowledges and agrees that the Supplier does not control the content of third party sites or resources linked to through the use of Integration Services and has no liability or responsibility for them, the Customer's use or inability to use Integration Service, the web sites they link to or their contents, their accuracy or reliability or for any loss or damage whatsoever that may arise from the Customer's use of them or any results obtained from such use.
- 6.2 The Customer should contact the third party with any questions about third-party products and services or any issues with them, including (without limitation) integration with the Customer's own systems.

7. RESTRICTIONS OF USE AND ACCEPTABLE USE POLICY

- 7.1 The Customer shall not and shall procure that each User shall not: upload, access, store, distribute or transmit any viruses, or any material during its use of the Service that: **(a)** is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; **(b)** facilitates illegal activity; **(c)** depicts sexually explicit images; **(d)** promotes violence; **(e)** is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; **(f)** causes damage or injury to any person or property; or **(g)** permit (knowingly, recklessly or otherwise) use of the Service for unauthorised or suspected fraudulent or otherwise suspicious activity; and the Supplier reserves the right, without liability to the Customer, to disable the Customer's (and any Users') access to the Service as a result of a breach or suspected breach of the provisions of this paragraph.
- 7.2 Except to the extent expressly permitted under these Terms and to the maximum extent permitted by law, the Customer shall not and the Customer shall procure that each User shall not: **(a)** attempt (i) to copy, reproduce, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Service and/or Documentation (as applicable) in any form or media or by any means; or **(ii)** to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Service; or **(b)** access all or any part of the Service and Documentation in order to build a product or service which competes with the Service and/or the Documentation; or **(c)** use the Service and/or Documentation to provide services to third parties or offer any part of the Service for sale or distribution over any other medium; or **(d)** license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Service and/or Documentation available to anyone except the Users on the terms of the Agreement; or **(e)** attempt to obtain, or assist third parties (other than Users) in obtaining, access to the Service and/or Documentation; or **(f)** permit any third party (other than a User) to benefit from the use or functionality of the Service.

8. THE CUSTOMER OBLIGATIONS

- 8.1 The Customer shall comply with and shall procure that the Users shall comply with all applicable laws and regulations when accessing and using the Service.

9. CONFIDENTIALITY, DATA AND DATA PROTECTION

- 9.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. Each party shall hold the other's Confidential Information in confidence and shall only use the other's Confidential Information for the purpose of obtaining the benefit of or performing its obligations under and in connection with this Agreement. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees, agents and Users in violation of the terms of this Agreement.
- 9.2 A party's Confidential Information shall not be deemed to include information that: (a) is or becomes publicly known other than through any act or omission of the receiving party; (b) was in the other party's lawful possession before the disclosure; (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body, provided that to the extent practicable and permitted by law, the receiving party shall promptly notify the disclosing party in advance of such requested disclosure and provide the disclosing party with an opportunity to object to such request.
- 9.3 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party, provided that such party has taken reasonable steps to protect and avoid the loss, destruction, alteration or disclosure of such Confidential Information.
- 9.4 **Data.** Customer shall own all rights, title and interest in and to the Data and shall have sole responsibility for its legality, reliability, integrity and accuracy.

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- 9.5 The Supplier shall, in providing the Service, comply with its Privacy Policy relating to the privacy and security of the Data, which is incorporated into and forms part of these Terms and which may be amended by the Supplier from time to time.
- 9.6 The Customer grants to the Supplier and its third party licensor, Connexica Limited a non-exclusive, perpetual, irrevocable, royalty free license to use any data generated from the Customer's use of the Service (**Service Data**) as well as any Data (provided that such data are anonymised) for the purpose of: statistical analysis and monitoring, querying and analysing such data for the provision and improvement of Service; **(b)** exercising its rights and fulfilling its other obligations under this Agreement; **(c)** complying with any applicable governmental or regulatory requirements; and/or **(d)** any other commercial purposes.
- 9.7 The parties acknowledge that if the Supplier processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Customer shall be the controller and the Supplier shall be the processor for the purposes of the **Data Protection Legislation** (as defined in Schedule 1). Schedule 1 sets out the parties' data processing obligations.

advance in accordance with this clause 11.

- 11.2 The Customer shall provide to the Supplier and/or its payment service agent, valid, up-to-date and complete contact and billing details and authorises the Supplier and/or its payment service agent to send instructions to the Customer's financial institution that issued the relevant card to take payments from that card at the commencement of the Service and on each anniversary of its commencement, until such time as the Subscription is lawfully cancelled.

10. SUSPENSION OF SERVICE

- 10.1 The Supplier may suspend the Service without notice and without liability if: **(a)** the Supplier reasonably believes that the Service is being used in breach of the Agreement and the Customer does not remedy such breach promptly following receipt of the Supplier's written request; **(b)** the Customer does not fully co-operate with the Supplier's investigation of any suspected violation of the Agreement; **(c)** there is an attack on the Service and/or Service is accessed by or manipulated by an unauthorised third party; **(d)** the Supplier is required by law to suspend the Service or the Customer's (including the Users') access to the Service; **(e)** there has been unauthorised or suspected fraudulent or suspicious activity relating to the Customer's or a User's use of the Service; or **(f)** the Supplier reasonably believes that suspension of the Service is necessary to protect its or any other party's network, system, the Service or other customers.
- 10.2 The Supplier may give the Customer advance notice of a suspension under this clause 10 where (at the Supplier's sole discretion) it is reasonable to do so.
- 10.3 Any suspension of the Service under this paragraph 10 shall not suspend, reduce or extinguish the Customer's obligation to pay any Fees.

11. CHARGES AND PAYMENT

- 11.1 The Customer shall pay Fees to the Supplier, in the amount set out in the Subscription or as increased in accordance with paragraph 11.4, annually in

Without prejudice to its other rights and remedies, in the event that the Supplier or its payment service agent is unable to take payment in relation to any Renewal Term: **(a)** the Supplier may, without liability to the Customer, on 2 days' advance notice, disable the Customer account and suspend access to all or part of the Service and the Supplier shall be under no obligation to revoke such suspension until all outstanding Fees including any interest thereon have been paid in full.

11.3 All amounts and fees stated or referred to in this Agreement: (a) are non-cancellable and non-refundable; (b) are exclusive of applicable tax, which shall be added to the invoice(s) at the appropriate rate.

11.4 The Supplier shall be entitled to increase the Fees payable for the Service at the start of each Renewal Term without notice.

12. PROPRIETARY RIGHTS

12.1 The Customer acknowledges and agrees that the Supplier and/or its licensors are the sole and exclusive owners of all intellectual property and other proprietary rights in the Service and all and any software used by the Supplier in connection with the Service, its website, domain name and the Documentation. Except as expressly stated in these Terms, the Agreement does not grant the Customer or Users any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Service and the software used by the Supplier in connection with the provision of the Service, its website, domain name or the Documentation.

13. INDEMNITY

13.1 The Customer shall indemnify the Supplier and its licensor, Connexica Limited against all claims, actions, liabilities, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with: (i) the Customer or any User's use of the Service and/or Documentation; or (ii) the Customer's collection, use, processing and/or transfer of any Data or other personal data; or (iii) the Customer and/or any User's breach of this Agreement.

14. LIMITATION OF LIABILITY

14.1 Except as expressly stated in paragraph 14.3, the Supplier shall not be liable for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer) whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories: special damages even if the Supplier

was aware of the circumstances in which such special damage could arise; loss of profits; loss of anticipated savings; loss of business opportunity; loss of goodwill; ex-gratia payments; loss or corruption of data; and indirect or consequential loss or damages.

14.2 The Supplier's total liability, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances in any calendar year of the Subscription Term exceed a sum equal to the Fees paid in respect of such year.

14.3 The exclusions in paragraphs 14.1 and 14.2 shall apply to the fullest extent permissible at law, but liability is not excluded for: **(a)** death or personal injury caused by the

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or accidents beyond its reasonable control.

negligence of either party, its officers, employees, contractors or agents; **(b)** fraud or fraudulent misrepresentation; and **(c)** any other liability which may not be excluded by law.

15. TERM AND TERMINATION

- 15.1 This Agreement shall, unless otherwise terminated as provided in this clause 15, continue for the Subscription Term (12 calendar months from the Service commencement date) and thereafter shall automatically renew for successive 12 calendar month periods (**Renewal Term**) unless the Customer cancels its Subscription in advance of the relevant Renewal Term commencing.
- 15.2 Without affecting any other rights that it may be entitled to, either party may terminate this Agreement without liability to the other if: **(a)** the other party commits a material breach (including non-payment of Fees) of the Agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach; or **(b)** the other party has a receiver or administrative receiver appointed over it or over any part of its business or assets or passes a resolution for winding up (except for the purposes of a genuine scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, or becomes subject to an administration order or enters into any voluntary arrangement with its creditors, or it ceases or threatens to cease to carry on business.
- 15.3 On expiry or termination of this Agreement for any reason: **(a)** all access to the Service granted under this Agreement shall immediately terminate and the Service will cease to operate immediately; and **(b)** the accrued rights and obligations of each party as at termination shall survive termination; and **(c)** the Supplier may destroy the Customer Data in its possession. The Customer agrees that the Supplier may retain a copy of the Customer Data for a reasonable period post termination, not to exceed twelve months for the purpose of enabling the Customer to re-engage the Service without material disruption, if/where applicable or the use permitted under paragraph 9.6.
- 15.4 All Fees are non-refundable and no refund shall be made in the event that a Subscription and/or this Agreement is terminated prior to the end of the Initial Term or any Renewal Term for any reason.

16. FORCE MAJEURE

The Supplier shall have no liability to the Customer under this Agreement if the Supplier is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions

they cover. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or otherwise, which is not expressly set out in this Agreement.

- 17.4 the Customer shall not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 17.5 Nothing in this Agreement is intended to or shall operate to create a partnership, joint venture, agency, franchise or employment relationship between the parties.
- 17.6 This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns).
- 17.7 Those provisions intended to survive termination of this Agreement, including without limitation, paragraphs 10 through 19 inclusive, shall survive any termination or expiration of this Agreement in accordance with their terms.
- 17.8 This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement.

17. GENERAL

- 17.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy.
- 17.2 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the

18. NOTICES

- 18.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by email, by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes as set out in this Agreement. Where the Supplier is required under this Agreement to give the Customer any notice in writing, the Supplier may give this notice by letter or by email.

19. GOVERNING LAW AND JURISDICTION

This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of England and Wales and the parties hereby irrevocably submit to the exclusive jurisdiction of the English courts.

20. DEFINITIONS AND INTERPRETATION

A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted other provisions shall remain in force. These Terms and the Subscription constitute the whole agreement between the parties and supersede any previous arrangement understanding or agreement between them relating to the subject matter.

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Schedule 1 – Data Processing Obligations

Data Protection Legislation: means together the Data Protection Act 2018 and General Data Protection Regulation (EU) 2016/679 and all applicable formal or informal guidance, rules, requirements, directions, guidelines, recommendations, advice, codes of practice, policies, measures or publications of the Information Commissioner's Office, other relevant regulator, and/or relevant industry body in each case in any relevant jurisdiction.

Personal data may be transferred or stored outside the EEA or the country where the Customer and the Users are located in order to carry out the Service and the Supplier's other obligations under this Agreement.

The Customer will ensure that it has all necessary appropriate consents, authorities and permissions to enable lawful transfer of personal data to the Supplier for the duration and purposes of this Agreement so that the Supplier may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf.

The Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this Agreement: **(a)** process that personal data in accordance with the Customer's written instructions and the Data Protection Legislation (and in case of any conflict, the latter shall prevail). The Supplier shall not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled: **(i)** the Customer or the Supplier has provided appropriate safeguards in relation to the transfer; **(ii)** the data subject has enforceable rights and effective legal remedies; **(iii)** the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and **(iv)** the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data; **(c)** assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; **(d)** notify the Customer without undue delay on becoming aware of a personal data breach; **(e)** at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Agreement unless required by Applicable Laws to store the personal data; and **(f)** maintain complete and accurate records and information to demonstrate its compliance with this Schedule 1 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the personal data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and Service, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

The Customer consents to the Supplier appointing third parties as third-party processors of personal data under this Agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this Schedule 1 and in either case which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation.

Either party may, at any time on not less than 30 days' notice, revise this Schedule 1 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).