

Track My Carbon - Terms of Service v1.1

These Terms of Service (the "Terms") govern the purchase of a Subscription, an online order to access and use the Supplier's Track My Carbon Services (the "Services") detailing the initial term of the subscription (the "Subscription Term") and the fees payable (the "Fees") by a customer (the "Customer"). Together, the Terms and the Subscription shall form an agreement (the "Agreement") between the Supplier and the Customer.

BY ACCESSING OR USING THE SUPPLIER PLATFORM ("PLATFORM"), THE CUSTOMER AGREES 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 PLATFORM.

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 Services and Platform.

The Supplier may change these Terms at any time with or without notice by updating them on its website at www.trackmycarbon.co.uk. Please check the Terms regularly to take note of any changes.

References to the Supplier are references to CultureBlox Limited, a company incorporated and registered in England and Wales (company number 10242695) with the registered address at Suite 1, 5th Floor, 31/32 Park Row, Leeds, England, LS1 5JD

1. SERVICES

- 1.1 These Terms set out the contractual terms and conditions which govern the use, receipt and supply of the Services by the Supplier to the Customer.
- 1.2 **Term of the Subscription.** Upon purchasing an online Subscription and agreeing to these Terms, the Agreement will form and the Supplier shall grant the Customer access to the Platform and the Services from the date set out in the Subscription.
- 1.3 **Provision of Services.** The Supplier shall, during the period set out within the Subscription (the "Subscription Term"), use reasonable endeavours to make the Platform and Services available 24 hours a day seven days a week, except for: (a) planned maintenance and (b) unscheduled maintenance. All planned maintenance work will be carried out outside of the hours of 9am – 5pm Mon-Fri. Time for performance of the Services shall not be of the essence.
- 1.4 **Service Improvements.** the Customer acknowledges that the Supplier may change or modify the Services from time to time. The Supplier shall use reasonable endeavours to notify the Customer if a change to the Services will materially and detrimentally affect the Customer's use of the Services.

2. MINIMUM REQUIREMENTS

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

3. SUPPORT

- 3.1 **The Customer's responsibility to understand the Services.** The Services are designed for ease of use and tutorial materials (the "Documentation") may be provided

on the Platform and updated from time to time. The Customer agrees that it is the Customer's responsibility to ensure that any Users accessing and using the Services are appropriately trained to do so. The Supplier will provide reasonable technical support by email through the Platform. 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 on the Platform.

4. ACCESS

- 4.1 Subject to the payment of the Fees and the Customer and its User(s)' compliance with these Terms, the Supplier grants to the Customer a non-exclusive, non-transferable, non-sub-licensable, and revocable right to access and permit Users to access and use the Services and the Documentation during the Subscription Term and any renewal thereof, within the limits of the Subscription purchased.
- 4.2 **Limitations on Use.** The rights provided under these Terms of Service are granted to the Customer only and shall not be considered granted to any subsidiary, affiliate or holding company of the Customer, unless otherwise agreed in writing.
- 4.3 The Customer may from time to time provide access to the Services to: (a) its officers, employees and/or consultants; and (b) the Customer's third-party partners (individually a "User" and collectively "Users"). The Customer undertakes that it shall at all times remain 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 Services and Platform and the calculations which they may provide are provided on an 'as is' and 'as available' basis. The Supplier shall perform the Services with reasonable skill and care.
- 5.2 If the Services are not provided with reasonable skill and care, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any failure by the Supplier to provide the Services with reasonable skill and care.
- 5.3 The Supplier shall have no liability to the Customer in relation to and to the extent that any fault, failure, loss or non-conformance is caused by: (a) misuse, incorrect or unauthorised use of the Services; (b) failure of the Customer hardware, software and/or infrastructure or any part thereof; (c) use of the Services not in accordance with guidance provided by, or 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) a computer virus, malware, other computer code, or programming device that might be used 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 Services and/or Platform will be uninterrupted or error-free; **(b)** does not warrant that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer

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requirements and shall have no liability for: (i) any inaccuracy, error or omission of any data or information entered into the Services by the Customer or any User; (ii) any loss of or corruption of any data inputted by the Customer and the calculated responses provided by the Platform (the "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 Services 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.

6. INTEGRATION WITH THIRD PARTIES

- 6.1 **Third Party Services / Integration.** The Supplier offers services and functionality using third party developer tools such as application programming interfaces ("APIs") and Stripe (our "Integration Services"). These 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 Supplier Integration Services is on an "as is" basis and without any warranty of any kind and the Customer agrees that the Supplier has no control over the content of third party sites or resources linked to through the use of APIs or the Customer's use of the Supplier's API and the Supplier accepts no liability or responsibility for them, the Customer's use or inability to use Integration Services, 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 thereof or any results obtained.
- 6.2 The Customer should contact the third party with any questions about third-party products and services or any issues with them including integration with the Customer's own systems.

7. RESTRICTIONS OF USE AND ACCEPTABLE USE POLICY

- 7.1 The Customer shall not and the Customer shall procure that each User shall not: upload, access, store, distribute or transmit any viruses, or any material during the course of its use of the Services 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)** there has been unauthorised or suspected fraudulent or otherwise suspicious activity related to the Customer's use of the Services; and the Supplier reserves the right, without liability to the Customer, to disable the Customer (including any and all Users') access to the Services as a result of a breach of the provisions of this clause.
- 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)** **(i)** attempt to copy, reproduce,

modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services and/or Documentation (as applicable) in any form or media or by any means; or **(ii)** attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services; or; **(b)** access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or **(c)** use the Services and/or Documentation to provide services to third parties or offer any part of the Services 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 Services and/or Documentation available to anyone except the Users; or **(e)** attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation; or **(f)** permit any third party to benefit from the use or functionality of the Services.

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 Platform and the Services.

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 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 or agents 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 **Customer Data.** the Customer shall own all rights, title and interest in and to all of the Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Data.

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- 9.5 The Supplier shall, in providing the Services, 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 Services ("Service Data") as well as any Data (provided that such data is anonymised) for the purpose of: **(a)** statistical analysis and monitoring, querying and analysing such data for the purpose of providing and improving the quality of services; **(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**. Schedule 1 sets out the obligations of the parties in respect to the processing of personal data.

10. SUSPENSION OF SERVICES

- 10.1 The Supplier may suspend the Services without notice and without liability if: **(a)** the Supplier reasonably believes that the Services are being used in breach of the Agreement and the Customer does not remedy the failure within fourteen days of the Supplier's written notice thereof; **(b)** the Customer does not co-operate with the Supplier's investigation of any suspected violation of the Agreement; **(c)** there is an attack on the Platform and/or the Services or the Platform and/or Services are accessed by or manipulated by an unauthorised third party; **(d)** the Supplier is required by law to suspend the Services or the Customer (including the Users) access to the Services; **(e)** there has been unauthorised or suspected fraudulent or suspicious activity relating to the Customer or a User's use of the Services; or **(f)** the Supplier reasonably believes that suspension of the Services is necessary to protect its or any other party's network, system, the Services or other customers.
- 10.2 Outside of any suspicion of fraud, the Supplier will use reasonable endeavours to give the Customer advance notice of a suspension under this clause 10, unless to do so would be unlawful or increase the potential risk of harm, damage or operational or security risk.
- 10.3 For the avoidance of doubt, any suspension of the Services, unless caused directly by the Supplier, shall not suspend, reduce or extinguish the Customer's obligation to pay any Fees.

11. CHARGES AND PAYMENT

- 11.1 The Customer shall pay the Fees to the Supplier annually in advance in accordance with this clause 11.
- 11.2 The Customer shall provide to the Supplier and/or its payment services agent, valid, up-to-date and complete contact and billing details and authorises the Supplier and/or its payment services agent to send instructions to the Customer's financial institution that issued the relevant card to take payments from that card in relation to the Initial Term and on an annually recurring basis

thereafter in relation to each Renewal Term, until such time as the Subscription is cancelled.

Without prejudice to its other rights and remedies, in the event that the Supplier or its payment services 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 Services 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 Services 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 Platform, the Services and all and any software used by the Supplier in connection with the provision thereof, the website, domain name and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licenses in respect of the Platform, the Services and the software used by the Supplier in connection with the provision thereof, the Platform, 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 Services 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 Nothing in this Agreement excludes the liability of either party: **(a)** for death or personal injury caused by that party's negligence; and, **(b)** for fraud or fraudulent misrepresentation; and (c) the Customer's indemnity obligations within clause [13].
- 14.2 Without prejudice to the Customer's obligation to pay the Fees, neither party shall be liable, in contract, tort (including negligence), breach of statutory duty or otherwise under or in connection with this Agreement in relation to: (a) loss of revenue, profits, contracts, goodwill, anticipated earnings or savings (whether direct, indirect or consequential); (b) any indirect or consequential losses, howsoever occurring.
- 14.3 Subject to clause 14.1 and clause 14.2 and without prejudice to the Customer's payment obligations, each Party's total maximum aggregate liability under or in connection with this Agreement and whether arising in

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contract, tort (including negligence), breach of statutory duty or otherwise shall under no circumstances exceed the Fees paid and/or payable to the Supplier.

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 start date) and thereafter shall automatically renew for successive 12 calendar month periods unless the Customer cancels its Subscription through the Platform 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 any of these Terms of Service and (if such a breach is remediable) fails to remedy that breach within 30 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 Services and the Platform granted under this Agreement shall immediately terminate and the Services 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 sole purpose of enabling the Customer to re-engage the Services without material disruption, if/where applicable.
- 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 or accidents beyond its reasonable control.

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 other provisions shall remain in force.
- 17.3 This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter

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, clauses 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.

18. NOTICES

- 18.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered 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.

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Schedule 1 – Data Processing Obligations

Data Protection Legislation: means the data privacy laws applicable to the processing services provided by the Parties to each other, including, where applicable, the Directive 95/46/EC, as amended or replaced by any subsequent regulation, directive or other legal instrument of the European Union including by the GDPR or similar law, the Privacy and Electronic Communications Regulations 2003 or the e-Privacy Regulation 2017, or the applicable data privacy laws of any other relevant jurisdiction, including the DPA, 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.

The 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 Services 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 the 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 only on the Customer's documented written instructions unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (**Applicable Laws**). Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer; **(b)** 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 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 services, 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).