

BRIGHTER PLANET SOFTWARE-AS-A-SERVICE AGREEMENT

By checking the “I have read and agree to the terms of service” option to subscribe to Brighter Planet, Inc.’s software-as-a-service, (i) you (“Customer”) are consenting to be bound by and become a party to this agreement (“Agreement”), and (ii) you represent and warrant that you have the authority to cause such entity to enter into this Agreement and to become bound by this Agreement. If Customer does not agree to all of the terms of this Agreement, you must not check this option.

AGREEMENT. This Agreement sets forth the terms and conditions of Customer’s use of software-as-a-service provided by Brighter Planet, Inc., PO Box 1357, Shelburne, Vermont 05482 (“Brighter Planet”).

1. Definitions.

Application means the software and other material, which may include open-source software, used by Brighter Planet to access, configure and provide the Services.

Commercial Use means use of the Service that results in or is intended to produce commercial advantage, monetary compensation, or private benefit. Brighter Planet may, at its sole discretion, classify any use of the Service as Commercial Use.

Customer Data means any data that Customer sends to the Service and any data that Customer receives from the Service in fulfillment of a request..

Documentation means instructions and examples pertaining to appropriate integration with and proper use of the Services, accessed at <http://carbon.brighterplanet.com> or other such URL as Brighter Planet may specify.

Intellectual Property Rights means all intellectual property rights, including patents, trademarks, trade name, service mark, copyright, trade secrets, know-how, process, technology, development tool, ideas, concepts, design right, domain names, moral right, database right, methodology, algorithm and invention, and any other proprietary information (whether registered, unregistered, pending or applied for).

Non-Commercial Use means use of the Service that is not intended to produce and does not result in commercial advantage, monetary compensation, or private benefit. Brighter Planet may, at its sole discretion, classify any use of the Service as Non-Commercial Use.

Service means software-as-a-service provided by Brighter Planet, including but not limited to the emission estimate service for use in calculating carbon emissions using customer data, and associated Documentation.

Usage Data means any data that Brighter Planet collects or generates during the performance of the Service, including non-confidential elements of Customer Data.

Usage Fees means the fees payable by Customer pursuant to this Agreement.

2. Service.

(a) Brighter Planet Obligations. Brighter Planet hereby agrees, subject to and during the term of this Agreement: (i) to provide the Service to Customer in accordance with the Agreement; (ii) to grant or procure a right for Customer to access and use the Application as a part of the Service only; (iii) to provide ongoing maintenance, upgrades and enhancements to the Service; (iv) to use all commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify Customer promptly of any such unauthorized use which may affect Customer.

(b) Customer Obligations. Customer hereby agrees, subject to and during the term of this Agreement: (i) to accurately represent whether its usage is Commercial Use or Non-Commercial Use; (ii) not to reverse-engineer the Application; (iii) to use an appropriate integration method for the volume and/or nature of

queries to the Service; (iv) that it is solely responsible for all of its activities and for the accuracy, integrity, legality, reliability, and appropriateness of all Customer Data; (v) to use all commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify Brighter Planet promptly of any such unauthorized use; (vi) to comply with all applicable laws in using the Service, wherever such use occurs, and not use, or require Brighter Planet to use, any Customer Data obtained via the Service for any unlawful purpose; and (vii), to accurately represent Customer's use of the Service and data obtained from the Service..

3. Access to the Service, Attribution And Usage Fees.

(a) Customer Accounts. Customer must create an account and provide Brighter Planet with valid contact information prior to receiving access to the Service. If Customer is making Commercial Use of the Service, Customer must also provide Brighter Planet with valid credit card information.

(b) API key. Customer must register for an application programming interface ("API") key, which it must use when making Service requests, except that Customer may leave out the API key when it is publishing links to methodology reports. Customer agrees that it will not register for multiple API keys in order to avoid usage restrictions.

(c) No Usage Fees for Non-Commercial Use. No Usage Fees apply to Non-Commercial Use.

(d) Usage Fees for Commercial Use. Commercial Use of the Service is charged at the prices specified at <http://carbon.brighterplanet.com/pricing> or other such URL as specified by Brighter Planet. Transactions will be logged and billed to Customer's credit card on a monthly basis. If Usage Fees are greater than \$100.00 per month, Customer may be required to sign a paper version of this Agreement.

(e) Data Preparation & Configuration. Customer will ensure that: (i) Customer Data is in proper format as specified by the Documentation; and (ii) no other software, data or equipment having an adverse impact on the Service has been introduced.

(f) Attribution. Customer will give attribution to Brighter Planet wherever data from the Service is used by displaying a hyperlink to <http://brighterplanet.com> in the form of (i) the graphical badge as specified at <http://impact.brighterplanet.com/documentation> or (ii) the words "Powered by Brighter Planet".

4. Availability, Maintenance and Technical Support.

(a) Availability & Maintenance. Brighter Planet will use commercially reasonable efforts to make the Service available. Downtime for maintenance, upgrades, enhancement, or any other reason, may be scheduled at any time.

(b) Technical Support. Brighter Planet will offer technical and customer support on a first-come, first-served basis during regular business hours, Eastern Standard Time.

5. Intellectual Property Rights.

(a) Brighter Planet Intellectual Property. Brighter Planet and its third-party licensors (as appropriate) shall retain all Intellectual Property Rights in the Service and Usage Data. Except as expressly set forth herein, no Brighter Planet Intellectual Property Rights are granted to Customer.

(b) Customer Intellectual Property. Customer retains all Intellectual Property Rights in Customer Data. Customer grants Brighter Planet a license (i) to use the Customer Data to the extent necessary for the performance of the Services; (ii) to keep an archival copy subject to the provisions of the relevant data protection regulations; and (iii) to create Usage Data by collecting non-confidential elements of Customer Data, such as dates, location codes, equipment types, carriers, and other data as determined by Brighter Planet and in conjunction with automatically generated data such as IP address, time, and frequency of access..

(c) **Feedback Relating to Services.** Brighter Planet shall have a perpetual, royalty-free, irrevocable, world-wide license to use and incorporate into the Services any suggestions, ideas, modification requests, feedback or other recommendations related to the Services provided by or on behalf of Customer.

(d) **Derivatives And Compilations Of Usage Data.** Brighter Planet shall have a perpetual, royalty-free, irrevocable, world-wide license to use, sublicense, and publish derivative works and compilations resulting from collection and analysis of Usage Data.

6. Privacy and Personal Information.

(a) **Brighter Planet's Privacy Policy.** Brighter Planet's Privacy Policy, made a part hereof, is available at http://brighterplanet.com/privacy_policy.

7. Term; Termination.

(a) **Term.** This Agreement is effective from the time Customer first uses the Service until terminated by either Customer or Brighter Planet.

(b) **Termination Without Cause.** Customer may terminate this Agreement by discontinuing use of the Service and paying any remaining usage fees. Brighter Planet may terminate this Agreement by discontinuing its provision of the Service to Customer, in which case Customer is not obligated to pay any remaining usage fees.

(c) **Breach.** Brighter Planet may terminate this Agreement if Customer breaches any material obligation provided hereunder, including Customer's obligations specified in Section 2(b), which breach is not cured within ten (10) days of Brighter Planet's notice to Customer.

8. Confidential & Proprietary Information. For purposes of this Section, a Party receiving Confidential & Proprietary Information (as defined below) shall be the "Recipient" and the Party disclosing such information shall be the "Discloser."

(a) **Acknowledgment.** Customer hereby acknowledges that the Service (including any Documentation, source code, translations, compilations, partial copies and derivative works used in connection with the Services) is provided using confidential and proprietary information belonging exclusively to Brighter Planet (or its designated third party supplier), and Brighter Planet hereby acknowledges that Customer Data contains confidential and proprietary information belonging exclusively to Customer or relating to its affairs (in each case, "Confidential & Proprietary Information"). Confidential & Proprietary Information does not include: (i) information already known or independently developed by Recipient outside the scope of this relationship by personnel not having access to any Confidential & Proprietary Information; (ii) information in the public domain through no wrongful act of Recipient, or (iii) information received by Recipient from a third party who was free to disclose it.

(b) **Covenant.** Recipient hereby agrees that during the Term and at all times thereafter it shall not use, commercialize or disclose such Confidential & Proprietary Information of the Discloser to any person or entity, except to its own employees and agents having a "need to know" (and who themselves are bound by similar nondisclosure restrictions), and to such other recipients as the Discloser may approve in writing; provided that all such recipients shall have first executed a confidentiality agreement in a form acceptable to Discloser. Recipient shall not: (i) alter or remove from any Confidential & Proprietary Information of the Discloser any proprietary legend, or (ii) decompile, disassemble or reverse engineer the Confidential & Proprietary Information (and any information derived in violation of such covenant shall automatically be deemed Confidential & Proprietary Information owned exclusively by the Discloser). Recipient shall use at least the same degree of care in safeguarding the Confidential & Proprietary Information of the Discloser as it uses in safeguarding its own confidential information, but in any event at least reasonable care. Upon termination or expiration of this Agreement, and regardless of whether a dispute may exist, Recipient shall, upon request by Discloser, return or destroy (as instructed by Discloser) all Confidential & Proprietary Information of Discloser in its possession or control and cease all further use thereof.

(c) **Injunctive Relief.** Recipient acknowledges that violation of the provisions of this Section would cause irreparable harm to Discloser not adequately compensable by monetary damages. In addition to other relief, it is agreed that injunctive relief shall be available without necessity of posting bond to prevent any actual or threatened violation of such provisions.

9. Warranties.

(a) **Noninfringement Warranty.** Brighter Planet represents and warrants to the best of its knowledge and belief that the Service, when properly used as contemplated herein, will not infringe or misappropriate any third-party Intellectual Property Rights. Upon being notified of such a claim, Brighter Planet shall at its option: (i) defend through litigation or obtain through negotiation the right of Customer to continue using the Service; (ii) rework the Service so as to make it noninfringing while preserving the original functionality, or (iii) replace the Service with functionally equivalent services. If none of the foregoing alternatives provide an adequate remedy, Customer may terminate all or any part of this Agreement. Customer represents and warrants that it owns or has all requisite rights to use the Customer Data with the Service, and to authorize Brighter Planet to use Customer Data as contemplated herein, and that such use will not infringe or misappropriate any third-party Intellectual Property Rights.

(b) **Limited Performance Warranty.** Brighter Planet represents and warrants that the Service will be provided substantially in accordance with the applicable Documentation; provided, that (i) the Service is implemented and operated in accordance with all instructions supplied by Brighter Planet; (ii) Customer notifies Brighter Planet of any defect within ten (10) calendar days after the appearance thereof; and (iii) Customer has paid all amounts due hereunder and is not in default of any provision of this Agreement.

(c) **Warranty Disclaimer.** EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION (“WARRANTIES”) BRIGHTER PLANET HEREBY DISCLAIMS WITH RESPECT TO ALL SERVICES, SUPPORT OR OTHER DELIVERABLES PROVIDED HEREUNDER, ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, ACCURACY, QUALITY, INTEGRATION, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. BRIGHTER PLANET DOES NOT WARRANT THAT THE SERVICE WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE.

10. Mutual Indemnity.

(a) **By Brighter Planet.** Brighter Planet shall defend, indemnify and hold Customer harmless from any claim (including attorney fees) that Brighter Planet violated Section 8 (“Confidentiality & Proprietary Information”) or that the Service in the form provided violates or infringes any Intellectual Property Rights; provided that Brighter Planet is given prompt notice of the claim and sole control over the defense and any settlement thereof (except Brighter Planet shall not enter into any settlement prejudicial to Customer without Customer’s consent). Brighter Planet is not obligated under this Section to the extent any claim arises from Customer’s breach of this Agreement or use of the Service in combination with any other service or any software, data, process or technology not supplied by Brighter Planet (where there would be no claim, but for such combination) or unless Customer provides Brighter Planet its reasonable cooperation, subject to Brighter Planet reimbursing Customer for its reasonable expenses arising from such cooperation.

(b) **By Customer.** Customer shall defend, indemnify and hold Brighter Planet harmless from any claim (including attorney fees) that Customer violated Section 8 (“Confidentiality & Proprietary Information”) or that Customer Data or Customer’s use of the Service harms any person, violates any law or infringes any Intellectual Property Rights; provided that Customer is given prompt notice of the claim and sole control over the defense and any settlement of any third party claim (except Customer shall not enter into any settlement prejudicial to Brighter Planet without Brighter Planet’s consent). Customer is not obligated under this Section to the extent any claim arises from Brighter Planet’s breach of this Agreement or use of Customer Data in connection with services other than the Services (where there would be no claim, but for such combination) or unless Brighter Planet provides Customer its reasonable cooperation, subject to Customer reimbursing Brighter Planet for its reasonable expenses arising from such cooperation.

11. Limitation of Liability. EXCEPT FOR INDEMNITIES EXPRESSLY PROVIDED BY THIS AGREEMENT, NEITHER PARTY IS LIABLE FOR DIRECT DAMAGES EXCEEDING ONE-HALF (1/2) OF THE FEES PAID BY CUSTOMER TO BRIGHTER PLANET RELATING TO THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE LAST EVENT GIVING RISE TO THE CLAIM, NOR FOR ANY CLAIM, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST SAVINGS, LOST PROFIT OR BUSINESS INTERRUPTION EVEN IF NOTIFIED IN ADVANCE OF SUCH POSSIBILITY) ARISING OUT OF OR PERTAINING TO THIS AGREEMENT. THIS LIMITATION IS INDEPENDENT OF REMEDY LIMITS.

12. Notices. Notices sent to either Party shall be effective when delivered in person or transmitted by fax machine, one (1) day after being sent by overnight courier, two (2) days after being sent by first class mail postage prepaid to a physical address provided by the customer, or five (5) days after being sent by email from Brighter Planet to the address in the customer account or from the customer to licensing@brighterplanet.com. A facsimile of this Agreement and notices generated in good form by a fax machine (as well as a photocopy thereof) shall be treated as "original" documents admissible into evidence unless a document's authenticity is genuinely placed in question.

13. Survival. Termination shall have no effect on the Parties' rights or obligations under Section 6 ("Privacy and Personal Information"); Section 8 ("Confidential & Proprietary Information"), rights or obligations under Section 9 ("Warranties"), Section 10 ("Mutual Indemnity"), Section 11 ("Limitation of Remedies & Liabilities"), Section 15 ("Independent Contractor Status"), any payment obligations or any provision which by its nature should survive.

14. Disputes, Choice of Law. This Agreement shall be governed by the laws of the State of Vermont, without regard to its conflicts of laws principles. All disputes arising under this Agreement shall be resolved exclusively by the courts of the State of Vermont or the U.S. District Courts in Vermont, and the parties all consent to the exclusive jurisdiction of such courts and hereby waive any jurisdictional or venue defenses available to them.

15. Independent Contractor Status. Each Party and its employees and agents are independent contractors in relation to the other Party with respect to all matters arising under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the Parties. Each Party shall remain responsible, and shall indemnify and hold harmless the other Party, for the withholding and payment of all Federal, state and local personal income, wage, earnings, occupation, social security, worker's compensation, unemployment, sickness and disability insurance taxes, payroll levies or employee benefit requirements now existing or hereafter enacted and attributable to themselves and their respective people.

16. Modifications to Agreement

(a) Posting of Revised Agreement. Brighter Planet may modify this agreement by posting a revised version at <http://brighterplanet.com/terms>. The revised agreement is effective immediately unless Brighter Planet expressly states otherwise. Continued use of the Service by the Customer beyond the Grace Period defined below constitutes acceptance by the Customer of the revised agreement. It is the responsibility of the Customer to regularly check the posted agreement for changes.

(b) Grace Period. Customers that do not accept to the revised agreement may notify Brighter Planet within fifteen (15) days and terminate the agreement by paying any remaining usage fees.

17. Miscellaneous. This document and the documents available through the website links referenced herein constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all other communications, whether written or oral. Except as specifically permitted herein, neither this Agreement nor any rights or obligations hereunder may be transferred or assigned by Customer without Brighter Planet's prior written consent and any attempt to the contrary shall be void. Brighter Planet reserves all rights not specifically granted herein. Neither Party shall be liable for delays caused by events beyond its reasonable control, except non-payment of amounts due hereunder shall not be excused by this provision. Any provision hereof found by a tribunal of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements

of law and all other provisions shall remain in full force and effect. Waiver of any provision hereof in one instance shall not preclude enforcement thereof on future occasions. Headings are for reference purposes only and have no substantive effect.

4010747.3