

## Terms of Use (Version1.0, last updated 15 June 2020)

Before you start using our software, we need you to read and accept these terms. If you cannot agree to these terms, do not use the software.

If you have questions or comments after reading these terms, please [contact us](#).

(Last updated 15 June 2020.)

### Using Evaluate8 Sustainability's software

#### 1. You and Evaluate8 Sustainability

When we say **you** or **your**, we mean both you and the organisation you are authorised to represent. When we say **we**, **our** or **us**, we mean Evaluate8 Sustainability ABN 93 634 221 257 [Ilea to insert relevant identifying numbers], which is the organisation you contract with and to whom you pay license fees.

#### 2. Our services

**Our services consist of all the services we provide now or in the future**, including our software measuring your carbon dioxide and other greenhouse gas emissions and your energy usage and any suggestions we make to reduce these emissions and energy usage.

#### 3. Creating a subscription

When you create a **subscription** to use our services and accept these terms, you become a **subscriber**. If you are the subscriber, you are the one responsible for paying for your subscription.

#### 4. Invited users

An **invited user** is someone other than the subscriber who has been invited to use our services through a subscription. (For example, someone else in your organisation may have paid for a subscription already.) If you are an invited user, you must also accept these terms and conditions to use our services.

#### 5. The right to use our services

Whether you are a subscriber or an invited user, we grant you the right to use our services for as long as the subscriber continues to pay for the subscription, until the subscription is terminated, or – if you are an invited user – until your access is revoked.

#### 6. Subscriber role

As a subscriber, you take responsibility for fully controlling how your subscription is managed and who can access it. In particular:

- You can transfer a subscription.
- You control access to a subscription. You decide which individuals in your organisation are invited to use our services. You can change or stop that access at any time. You are responsible for resolving any disputes with any invited users over access to your subscription.
- You are responsible for all your invited users' activity.

- You cannot use, resell, or sublicense our software to provide our services to other organisations

#### **7. Your responsibilities**

You need to keep your information (including a current email address) up to date. You are responsible for protecting your username and password from being stolen or misused. Our service has minimum password standards but you will ensure your password is strong and not easily guessable.

#### **8. When we introduce new or revised services**

We regularly update our software to provide better services. For new or updated services, there may be additional terms. We will let you know what those terms are before you start using those services.

#### **9. What we own**

We own our software and our copyrighted works, trademarks, designs, inventions, and other intellectual property except where otherwise stated. You agree not to copy, distribute, modify or make derivative works of any of our content or use any of our intellectual property rights in any way not expressly permitted by us.

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## **Pricing**

#### **10. Pricing plan**

Your use of our services generally requires you to pay an annual subscription fee based on your subscription type (the **subscription fee**). The **pricing plan** consists of the subscription and subscription fees we offered you, including invoicing, payment, auto-renewal and cancellation terms. The pricing plan may vary by organisation size, industry and region and includes information set out in the offer details and pricing page. We may update or amend the pricing plan from time to time. The terms of the pricing plan form part of these terms. As with any other changes to our terms, changes to the pricing plan will not apply retrospectively. If we make changes and you are a subscriber, we will email you to let you know at least 30 days in advance unless the timing of the change is outside of our control. Depending on your region, subscription fees may be inclusive or exclusive of transactional taxes where relevant (for example GST and VAT), as reflected in the pricing plan.

#### **11. Taxes for your use of our services**

You are responsible for paying all other external fees and taxes associated with your use of our services wherever levied. Your responsibility includes withholding tax if it applies, unless we already process that withholding tax. We may collect geographical location information to determine your location, which may be used for tax purposes. This means location information you give us must be accurate for tax residency purposes.

#### **12. Additional services**

Depending on where you are based and how you use our services, you may be able to take advantage of additional services that we offer. These might incur an additional fee. We will advise you about any additional terms and fees when you sign up for those services.

**13. Importance of paying on time**

You need to make timely payments to continue accessing our services. To avoid delayed or missed payments, please make sure we have accurate payment information. If we do not receive timely payments, we may suspend access to your subscription until the payment due is made.

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## Data use and privacy

**14. Use of your data**

When you enter or upload your data into our services, we do not own that data but you grant us a licence to use, copy, transmit, store, analyse, and back up all data you submit to us through our services, including personal data of yourself and others, to: enable you to use our services; allow us to improve, develop and protect our services; create new services; communicate with you about your subscription; and send you information we think may be of interest to you based on your marketing preferences.

**15. Use of your own personal data and that you enter about others**

We respect your privacy and that of others in your organisation and take data protection seriously. In addition to these terms, [your data](#) sets out how we use the personal data of individuals and the data of organisations.

**16. Anonymised statistical data**

When you use our services, we may create anonymised statistical data from your data and usage of our services, including through aggregation. Once anonymised, we may use it for our own purposes, such as to provide and improve our services, to develop new services or product offerings (such as selling aggregated data and analyses to governments), to identify trends, and for other uses we communicate to you.

**17. Data breach notifications**

Where we think there has been unauthorised access to personal data inside your subscription, we will let you know and give you information about what has happened. Depending on the nature of the unauthorised access, and the location of your affected contacts, you may be required to assess whether the unauthorised access must be reported to the contact and/or a relevant authority. We think you are best placed to make this decision, because you have the most knowledge about the personal data stored in your subscription.

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## Confidential information

### 18. Keeping information confidential

While using our services, you may share confidential information with us. We will take reasonable steps to protect your confidential information from being accessed by unauthorised individuals. We may share your confidential information with legal or regulatory authorities if required to do so.

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## Security

### 19. Security safeguards

We have invested in technical, physical and administrative safeguards to help keep your data safe and secure. However, no method of electronic storage is completely secure and we cannot guarantee absolute security. We will notify you if there appears to be unauthorised access to your account and we may also restrict access to certain parts of our services until you verify that access was by an authorised user.

### 20. Your role in keeping your data secure

You have an important part to play in keeping your data secure. You need to keep your login details secure, not let other person use them, and ensure you have strong security on your own systems. If you realise there has been any unauthorised use of your password or any breach of security to your account or email address linked to your account, you need to let us know immediately. You also agree not to use free-form fields in our software to store personal data (unless the field explicitly asks for personal data, for example a first name or last name), credit card details, tax identifiers or bank account details.

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## Relationships with third parties

### 21. Third-party products

We may recommend the use of goods and services provided by other organisations (**third-party products**). We may provide generic suggestions but also information about which organisations supply the goods and services that you could use to implement the suggestions. Any third party providing a third-party product is a **provider** and is independent of us, so be aware that a provider may also charge you fees and impose terms and conditions in addition to what you pay us.

### 22. Third-party terms and descriptions

Third-party products are subject to terms and conditions and privacy notices set by their providers. These include how the provider will use your data that you make available to them. Be sure to read and make sure you agree to their terms and conditions and understand their approach on personal and non-personal data before you connect to

them. The descriptions of third-party products that we publish, and any associated links, have been provided to us by the providers. While we make reasonable efforts to check the accuracy of the descriptions, the providers are solely responsible for any representations contained in those descriptions. We do not take any responsibility for third-party products.

**23. Use of your data to connect you to third party products**

If you choose to connect your subscription to third-party products, we will use your personal data for that connection. Where we receive data as a result of that connection, we will use that data in line with our [privacy notice](#) and these terms.

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## Maintenance, downtime and data loss

**24. Availability**

We strive to maintain the availability of our services, and provide online support, 24 hours a day. On occasion, we need to perform maintenance on our services, and this may require a period of downtime. We try to minimise any such downtime. Where planned maintenance is being undertaken, we will attempt to notify you in advance but we cannot guarantee this will always occur.

**25. Data loss**

Data loss is an unavoidable risk when using any technology. You are responsible for maintaining copies of your data entered into our services.

**26. No compensation**

Whatever the cause of any downtime, internet access issues or data loss, your only recourse is to discontinue using our services.

**27. Problems and support:** If you have a problem, please email [customer.support@evaluate8.net](mailto:customer.support@evaluate8.net) .

**28. Modifications**

We frequently release new updates, modifications and enhancements to our services, and in some cases discontinue features. Where this occurs, we will endeavour to notify you where practical (for example, by email, on our blog, or within our services when you log in).

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**29. Beta services**

Occasionally we may offer a beta service at no charge because we are testing its feasibility or utility or are seeking customer feedback. Because of the nature of these services, if you use them, you do so at your own risk.

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## Termination

### 30. Subscription period

Your subscription continues for 12 months. At the end of each billing period, these terms automatically continue for a further 12 months, provided you continue to pay the subscription fee in accordance with the pricing plan. You may choose to terminate your subscription at any time by providing one month's written notice in advance. You will still need to pay all relevant subscription fees owing up to and including the day of termination.

### 31. No refunds

No refund is due to you if you terminate your subscription in accordance with these terms.

### 32. Retention of your data

Once a subscription is terminated, it is archived and the data submitted or created by you is no longer available to you. We retain it for five years, during which time you can reactivate your subscription and once again access your data by paying the subscription fees. We retain data in case you need it as part of your record retention obligations, but you can get in touch with us to have your data removed completely if you wish.

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## Liability and indemnity

### 33. You indemnify us

You indemnify us against all losses, costs (including legal costs), expenses, demands or liability that we incur arising out of, or in connection with, a third-party claim against us relating to your use of our services or any third-party product (except as far as we are at fault).

### 34. Disclaimer of warranties

Our services and all third-party products are made available to you on an "as is" basis. To the maximum extent possible under the legal system of the region our contract is entered into, we disclaim all warranties, express or implied, including any implied warranties of non-infringement, merchantability and fitness for a particular purpose.

### 35. Limitation of liability

Other than liability that we cannot exclude or limit by law, our liability to you in connection with our services or these terms, in contract, tort (including negligence) or otherwise, is limited as follows:

- We have no liability arising from your use of our services for any losses, expenses or damages incurred.
- For loss or corruption of your data, our liability will be limited to taking reasonable steps to try and recover that data from our available backups.

- Our total aggregate liability to you in any circumstances is limited to the total amount you paid us for your subscription in the 12 months immediately preceding the date on which the claim giving rise to the liability arose.
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## Disputes

### 36. Dispute resolution

Most of your concerns can be resolved by contacting [customer.services@evaluate8.net](mailto:customer.services@evaluate8.net). However, if you have a complaint that we are unable to resolve to your satisfaction after you have contacted us, you and we agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction. You and we agree that any dispute must be brought in the parties' individual capacity and not as a plaintiff or class member in any purported class or representative proceeding.

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## Other issues

### 37. We do not provide professional advice

Evaluate8 Sustainability is not a professional services firm. The greenhouse gas and energy usage-related information and any suggestions provided by our software are general in nature and have been prepared without taking into account your organisation's objectives, financial situation, needs, and other specific circumstances. Before acting on such information, you should consider the appropriateness of the information having regard to your organisation's objectives, financial situation, needs and other specific circumstances. No representation or warranty is made as to the accuracy, completeness or reliability of any estimates made by our software, or appropriateness of any suggestions that may be made. To the maximum extent permitted by law, we disclaim all liability and responsibility for any direct or indirect loss or damage which may be suffered by you as a result of your reliance on the information we provided to you.

### 38. Events outside our control

We are not liable to you for any failure or delay in performance of any of our obligations under these terms arising out of any event or circumstance beyond our reasonable control.

### 39. Notices

Any notice you send to us must be sent to [customer.support@evaluate8.net](mailto:customer.support@evaluate8.net). Any notices we send to you will be sent to the email address provided through your subscription.

### 40. Consumer laws

In some places, there may be non-excludable warranties, guarantees or other rights provided by law (**non-excludable consumer guarantees**). These terms do not exclude, restrict or modify them. Except for non-excludable consumer guarantees and other rights you have that we cannot exclude, we are bound only by the express promises made in these terms. Our liability for breach of a non-excludable consumer guarantee is limited, at our option, to either replacing or paying the cost of replacing the relevant service (unless the non-excludable consumer guarantee says otherwise).

**41. Relationship between the parties; assignment**

Nothing in these terms is to be construed as constituting a partnership, joint venture, employment or agency relationship between you and us, or between you and any other subscriber or invited user. You are solely responsible for resolving disputes between you and any other subscriber or invited user.

**42. Changes to these terms**

We may decide to change these terms of use. No changes will apply retrospectively and if we make changes we will let you know. You can keep track of changes to our terms by referring to the version and the date last updated at the top of the terms. Generally, we endeavour to provide you with 30 days' notice of material changes before they become effective, unless we need to make immediate changes for reasons we have no control over. When we notify you, we will do it by email or by posting a visible notice through our services. If a change is not material, we may not notify you except through our blog. If you find a modified term unacceptable, you may terminate your subscription.

**43. Enforcement of terms**

If any part of these terms is unenforceable, you and we will ignore that part but everything else will remain enforceable.

**44. Interpretation**

Words like "include" and "including" are not words of limitation and where anything is within our discretion we mean our sole discretion.

Thank you for reading to the end. We hope our software helps you reduce your emissions.