
LSA Carbon Management Solution
Terms & Conditions



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These terms and conditions, govern the provision of the Greenstone Acco₂unt Software (the "Software") as described in the Annual Software Subscription (Schedule 1) and access to its CO₂re database (the "Database") on an application service provision basis (the "Software Subscription") and the provision of associated consultancy services (Schedule 2) (the "Consultancy Services").

These terms and conditions (Schedule 3) together with the Software Subscription (Schedule 1) and the Consultancy Services (Schedule 2) and the Special Terms (Schedule 4) form the Agreement.

1 Commencement and Duration

- 1.1. The Agreement will have effect from 10 August 2011. The Software Subscription period will also start to run from 10 August 2011. Unless terminated early in accordance with Clause 10, the Agreement shall remain in full force and effect until completion of the Consultancy Services by Greenstone and expiry of the Software Subscription. The Software Subscription will automatically renew unless you give Greenstone notice not to renew at least thirty (30) days prior to the annual renewal date for the Software Subscription.

2 Scope of Services

- 2.1. Upon and subject to the terms and conditions of this Agreement, and in consideration for fulfilment by you of the obligations in the Special Terms (Schedule 4), Greenstone shall provide the Software Subscription as described in Schedule 1 and the Consultancy Services described in Schedule 2.
- 2.2. As part of the Software Subscription Greenstone grants to you a non-exclusive non-transferable licence for the duration of this Agreement to access the Database and use (but not copy) the Software solely for your internal business purposes.
- 2.3. You shall comply with any obligations or responsibilities identified in this Agreement as being obligations or responsibilities of yours.
- 2.4. Greenstone may use tracking or other electronic devices to monitor your use of the Software and/or Database to ensure that your usage is not exceeding that

permitted by the terms of this Agreement.

3 Intellectual Property Rights

- 3.1 All rights, title and interest in the Software and the Database (other than your Input Data and Output Data) belong to and shall remain vested in Greenstone or its licensors. You acquire no rights in the Software and/or Database except where expressly granted in this Agreement.
- 3.2 You have no right to access the Software in source code form or in unlocked coding or with comments.
- 3.3 You shall not (i) attempt to duplicate, modify or distribute any portion of the Software; or (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human perceivable form any of the Software, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or (iii) use the Software or Database to provide services to third parties; or (iv) transfer, temporarily or permanently, any of your rights under this agreement; or (v) attempt to obtain, or assist others in obtaining, access to the Software and/or Database, other than as provided in this Agreement.
- 3.4 Except as expressly stated herein, this Agreement does not grant you 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 Software Subscription including the Software, Database and Documentation.

- 3.5 You may reproduce the Greenstone trademarks only to identify data generated from your Input Data through use of the Subscription Service (“Output Data”) and as agreed in the Special Terms (Schedule 4). Such reproduction must be in accordance with accepted trademark practice, including identification of the trademark owner name. Such use of Greenstone trademarks does not give you any right of ownership in the trademark.

4 Data

- 4.1 All rights, title and interest in Input Data entered into the Software or Database by you (or by Greenstone on your behalf) belongs to and shall remain vested in you.
- 4.2 It is your responsibility to keep copies of your Input Data and to take copies of any Output Data
- 4.3 You hereby grant to Greenstone a perpetual, transferable, irrevocable licence to store, manipulate, transmit, copy, display, sub-license or otherwise utilise your Input Data and any Output Data in anonymised form for any purpose not restricted to the performance of this Agreement, including but not limited to providing industry and sector based benchmarking of carbon emissions to third parties.
- 4.4 You warrant that Greenstone’s use of any Input Data, other data, materials or information supplied directly or indirectly by you shall not cause Greenstone to infringe any third party’s intellectual property rights in such item and you shall indemnify Greenstone in respect of any such third party infringement claims.
- 4.5 Provided you have paid the annual fee for the Software Subscription, Greenstone will retain up to a maximum of five (5) years’ of your Input Data at any one time. In the event that you require additional years of data over and above the immediately preceding five (5) year period to be stored and analysed in the Database, Greenstone may agree to this subject to payment by you of its then current additional storage fees.
- 4.6 You acknowledge that continued use of the Software Subscription by you shall

constitute acceptance of the quality of the data captured and/or calculation output via the Software.

5 Charges and Invoicing

- 5.1 You agree to pay the applicable subscription fees annually in advance and the applicable service charges as invoiced.
- 5.2 Greenstone may change any subscription fees at any time. Any amended subscription fees shall be applied to you on renewal or variation of your Software Subscription. Greenstone will give you notice (which may be by email) of any change in subscription fees not less than sixty (60) days prior to the applicable renewal date of your Software Subscription.
- 5.3 Unless otherwise agreed with you in Schedule 2, the service charges for Consultancy Services are on a time and materials basis at Greenstone’s then current rates applying at the date of provision of the Consultancy Services and are invoiced monthly in arrears.
- 5.4 In the event of a request from you to vary the scope of any services set out in the Schedule 1 and/or Schedule 2; or any delay or disruption to the provision of any services that is caused by you, you shall:
- 5.4.1 reimburse Greenstone for all properly and reasonably incurred travel costs and expenses; and
- 5.4.2 pay Greenstone the cost plus fifteen per cent (15%) for all third party costs properly and reasonably incurred in providing those services.
- 5.5 All subscription fees and/or service charges are due within thirty (30) days of the date of a valid invoice from Greenstone. Non-payment of any fees or charges when due shall constitute a material breach of this Agreement.
- 5.6 All subscription fees and service charges are exclusive of value added tax which shall be added at the rate and in the manner prescribed by law, from time to time and shall be payable by you.
- 5.7 In the event that any deduction or withholding is required by law (whether

in the UK or otherwise) to be made from any sum payable by you to Greenstone pursuant to this Agreement, you shall be obliged to pay such increased sum as will, after the deduction or withholding has been made, leave Greenstone with the same amount as it would have been entitled to receive in the absence of such requirement to make a deduction or withholding.

- 5.8 Interest shall be payable on any late payments under this Agreement at the rate of 4% above the base rate of the Bank of England or the maximum permitted by law if lower.

6 Warranty and Liability

- 6.1 Greenstone warrants that it shall provide the Software Subscription and the Consultancy Services in accordance with generally accepted applicable industry standards. The sole remedy for breach of the aforementioned warranty shall be re-performance of the particular service giving rise to the breach.
- 6.2 Save as expressly stated herein, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality, fitness for purpose, usefulness or timeliness) are hereby excluded to the extent permitted by law. Without limitation to this clause 6.2, Greenstone makes no warranty that the Software, Documentation, Database or any service will be error free.
- 6.3 Neither party excludes or limits liability to the other party for death or personal injury or fraud or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
- 6.4 Subject always to Clause 6.3 neither party shall have any liability to the other party under this Agreement, whether in contract, tort or any other theory of liability.
- 6.5 Subject always to Clause 6.3, in no event shall either party be liable to the other for:
- 6.5.1 indirect or consequential loss or damage; and/or

6.5.2 loss of profits, business, revenue, goodwill or anticipated savings; and/or

6.5.3 the cost of procuring substitute goods or services for goods or services purchased or obtained as a result of the services provided by Greenstone.

- 6.6 Subject always to Clause 6.3 Greenstone provides the Software Subscription on an "as is", "as available" basis and in no event shall Greenstone be liable for inaccuracies, incompleteness or errors in:

6.6.1 the Input Data or any other data captured in the Software and/or Database; or

6.6.2 the Output Data or any other results provided by the Software where the Input Data or any other data captured in the Software and/or Database was incomplete or contained inaccuracies or errors.

- 6.7 Subject always to Clause 6.3 Greenstone shall not be liable for any loss or damage resulting from unauthorised access to or alteration of your transmissions or the Input or Output Data not directly arising from Greenstone's negligence nor for any delay or disruption to the provision of the Software Subscription, Consultancy Services or support services that is caused by you.

- 6.8 The parties expressly agree that should any limitation or provision contained in this clause be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

7 Indemnity

- 7.1 Greenstone shall defend, indemnify and hold you harmless against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and legal fees) arising out of or in connection with your lawful use in accordance with the terms

of this Agreement, of the Software provided that:

- 7.1.1 Greenstone is given prompt notice of any such claim;
- 7.1.2 you provide reasonable co-operation to Greenstone in the defence and settlement of such claim, at Greenstone's expense; and
- 7.1.3 Greenstone is given the sole authority to defend or settle the claim.

7.2 In the defence or settlement of the claim, Greenstone may obtain for you the right to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this agreement without liability to you.

7.3 Greenstone shall have no liability if the alleged infringement is based on a modification of the Software by anyone other than Greenstone; or your use of the Software in a manner contrary to the instructions given to you by Greenstone; or your use of the Software after notice of the alleged or actual infringement from Greenstone or any appropriate authority.

8 Support and Maintenance

8.1 Greenstone offers online and telephone support via email and premium rate telephone number respectively, only during the hours of 9a.m. to 5.30 p.m. United Kingdom time, Monday to Friday excluding public holidays in the United Kingdom ("Normal Business Hours").

8.2 Updates and upgrades are provided as part of maintenance support services. The licence for use of the Software and access to the Database granted pursuant to this Agreement is for the most current version of the Software and/or Database running on the Greenstone domain or server. Greenstone will carry out upgrading and maintenance work to the Database and its host servers and domain from time to time. Greenstone will use reasonable endeavours to carry out such maintenance work outside of Normal Business Hours.

8.3 Greenstone will make commercially

reasonable efforts to remedy any reported error in the Software or Database where such error can be replicated and confirmed by Greenstone as a reproducible error which materially impairs the functionality of the Software or Database. Greenstone reserves the right to schedule fixes and updates to these errors only in the next scheduled release of an update or upgrade.

9 Confidentiality

9.1 For the purposes of this Agreement, "Confidential Information" means all information designated as such by either party in writing; all information which relates to the business, affairs, developments, trade secrets, know-how, personnel, customers and suppliers of either party; and all information which may reasonably be regarded as the confidential information of the disclosing party.

9.2 The Parties shall each only use Confidential Information for the purposes of this Agreement and shall each take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed or used other than for the purposes of this Agreement by its employees, agents, servants or sub-contractors.

9.3 The provisions of Clause 9.2 shall not apply to any information which:

9.3.1 is or becomes public knowledge other than by breach of Clause 9.2; or

9.3.2 is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or

9.3.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or

9.3.4 any disclosure which is required by any law (including any order of a court of competent jurisdiction) or the rules of any stock exchange or government regulatory authority having the force of law; or

9.3.5 is independently developed without access to the Confidential

Information.

10 Termination

- 10.1 Greenstone may at any time by notice in writing to you terminate this Agreement as from the date of service of such notice if there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in you or your parent company.
- 10.2 Either party may at any time by notice in writing to the other party terminate this Agreement as from the date of service of such notice if the other party, passes a resolution, or a court makes an order that it or its parent company be wound up, otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the other party or its parent company, or a similar event occurs under the law of any other jurisdiction.
- 10.3 Either party may at any time by notice in writing terminate this Agreement forthwith, if the other party is in material default of any obligation under this Agreement and:
- 10.3.1 the material default is capable of remedy and the defaulting party has failed to remedy the material default within sixty (60) days of written notice specifying the material default and requiring its remedy; or
- 10.3.2 the material default is not capable of remedy.
- 10.4 Without prejudice to Greenstone's right to terminate the Agreement pursuant to 10.3, Greenstone reserves the right to suspend the Software Subscription and/or any Consultancy Service until a default has been remedied. Greenstone reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the Software and/or resumption of any service.
- 10.5 In addition to your right to terminate your Software Subscription pursuant to Clause 1.1, either party may terminate this Agreement without cause by giving

not less than three (3) months' notice in writing which shall not take effect before each anniversary date for the Software Subscription.

11 Consequences of Termination

- 11.1 The termination or expiry of this Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.
- 11.2 On termination of this Agreement for any reason, upon your request, made within ninety (90) days after the effective date of termination, and subject to payment of our charges for doing so, Greenstone will make available to you for download, a file of any Output Data in comma separated value (.csv) format along with attachments in their narrative format. After such ninety (90) day period, Greenstone shall have no obligation to maintain or provide any of your Input Data nor any Output Data and shall thereafter, unless legally prohibited, delete all of your Input Data and any Output Data in its systems or otherwise in its possession or under its control.
- 11.3 Upon termination for any reason:
- 11.3.1 all rights granted to you under this Agreement shall cease;
- 11.3.2 you must cease all activities authorised under this Agreement;
- 11.3.3 you must immediately delete or remove all copies of any Documentation in your possession;
- 11.3.4 there shall be no refund of any fees paid pursuant to this Agreement.
- 11.4 Clauses 3.1, 4.1, 4.3, 4.4, 6.4, 6.5, 9 and this clause 11 shall survive the termination of this Agreement.

12 Protection of Personal Data

- 12.1 Each party shall comply with its respective obligations under the provisions of the Data Protection Act 1998 (the "Act").
- 12.2 Where Greenstone or any of its sub-contractors, processes personal data as a data processor on behalf of you, Greenstone shall, and shall procure its sub-contractors to:
- 12.2.1 act only on instructions from you

as a data controller; and

12.2.2 comply with your instructions in relation to the processing of personal data as such instructions are given and varied from time to time by you; and

12.2.3 at all times take appropriate reasonable measures against unauthorised or unlawful processing of personal data and against unintentional loss or destruction of, or damage to, personal data.

12.3 Where Greenstone receives any access requests in relation to any personal data processed by Greenstone or its sub-contractors on your behalf, you shall reimburse Greenstone's reasonably and properly incurred costs of complying with such requests.

12.4 You agree that Greenstone may transfer personal data outside of the European Economic Area from time to time where necessary to fulfil its obligations under this Agreement and you consent to such transfer (and you shall procure the consent of any data subjects as applicable) subject to Greenstone complying with its obligations under the Act in respect of such transfer.

13 Publicity

13.1 Greenstone may publicise that you are a customer of Greenstone. Greenstone shall obtain your prior consent (not to be unreasonably withheld) to any press announcements of this Agreement.

14 Force Majeure

14.1 Neither party shall be liable to the other for any loss of any kind whether directly or indirectly caused or incurred by the other Party by reason of any failure or delay in the performance of its obligations hereunder which is due to circumstances beyond its reasonable control.

15 Transfer and Sub-Contracting

15.1 You shall not assign, novate, sub-licence, declare a trust of or otherwise dispose of this Agreement or any part thereof without the previous consent in writing of Greenstone.

16 Amendments to this Agreement

16.1 This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by duly authorised representatives of each party.

17 Communications

17.1 Any notice or other communication which either Party is required or authorised by this Agreement to give or make to the other shall be given or made either by letter, delivered by hand or by post (addressed to the other Party at the address given above for Greenstone and marked for the attention of Greenstone's Finance Director, or the address given on the front page of this Agreement for you, as appropriate), or by successful transmission to a correct electronic mail address. If that letter or transmission is not returned as being undelivered, that notice or communication shall be deemed to have been given or made upon delivery to the addressee, for a letter delivered by hand, after two days for a letter delivered by post, or upon receipt of confirmation of successful transmission in the case of electronic mail.

17.2 Either Party may change its address for service by notice as provided in Clause 17.1.

18 Severability

18.1 If any of the terms of this Agreement are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

18.2 If the foregoing applies, the Parties shall use all reasonable endeavours to agree upon any lawful and reasonable variations to the Agreement which may be necessary in order to achieve, to the greatest extent possible, the same effect as would have been achieved by the clause, or the part of the clause in question.

19 Waiver

19.1 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in

writing in accordance with the provisions of Clause 17.1.

20 Rights of Third Parties

- 20.1 This Agreement shall not create any rights that shall be enforceable by anyone other than the Parties.

21 Export Control

- 21.1 The Greenstone domain, Software, Database and any associated services may use software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of the European Union. The European Union and the United States also maintain a list of countries which are subject to trade embargoes (**Embargoed Countries**) and lists of nationals or residents thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (**Designated Nationals**). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Software and accessing the Database, you represent and warrant that you are not located in, under the control of, or a national or resident of an Embargoed Country or a Designated National. You agree to comply strictly with all U.S. and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required. You also warrant that you will not use the Software, Database or services for any purposes prohibited by law.

22 Law and Jurisdiction

- 22.1 This Agreement shall be considered as a contract made in England and according to English Law and subject to the exclusive jurisdiction of the English Courts to which both Parties hereby submit.

23 Entire Agreement

- 23.1 This Agreement constitutes the entire understanding between the Parties relating to the subject matter of this Agreement

and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either Part

