

TERMS OF USE “CLIMAX”

Climax is an online software product (SaaS) that can be used to calculate companies' carbon emissions through data analysis and is provided 'as a service' in accordance with these Terms of Use ("ToU"). Please read these ToU carefully before you use the Platform.

1. DEFINITIONS

- 1.1. Account: private part of the Platform to which User has (exclusive) access.
- 1.2. Agreement: the SaaS terms and conditions between Customer of User and Sparqing B.V., of which these ToU form part.
- 1.3. Climax: Sparqing B.V., having its office at Aert van Nesstraat 45 (3012 CA) in Rotterdam, The Netherlands, and registered with the Dutch Chamber of Commerce under number 80769519.
- 1.4. Customer: the legal entity or natural person that is the customer of Climax and with whom the SaaS terms and conditions are concluded.
- 1.5. User or you(r): all individuals who create an account and who use the Platform, whether or not at the Customer's request.
- 1.6. ToU: these Terms of Use regardless of the form in which they are disclosed.
- 1.7. Intellectual Property: patent, copyright, trademark, design and model rights and/or other (intellectual property) rights, including database rights and - whether patentable or not - technical and/or commercial know-how, methods and concepts.
- 1.8. Platform: the landing page(s), Account(s) and further online environment including any links to Third Party Services as offered via www.climax.eco, app.climax.eco or in any other manner; the Platform does not include the Third Party Services.
- 1.9. Services: the services provided by Climax to Customer, including (providing access to) the Platform.
- 1.10. Third Party Services: third party services accessible via the Platform.

2. PLATFORM

- 2.1. You can only access and make use of the Platform when you, or your Customer have entered into an Agreement with Climax, in order to use the Services.
- 2.2. These ToU apply to any Agreement and/or to any use of the Platform or any other Services of Climax.

3. ACCOUNT AND PASSWORD

- 3.1. You agree to provide Climax and, if applicable your Customer, with complete and accurate information necessary to create an Account and to provide you access to the Platform, and you agree to keep this information up-to-date.
- 3.2. The Customer will appoint admin users that are provided with special user rights for admins (“**Admin User**”). The rights and obligations of User(s) in this ToU apply accordingly to the Admin User. The Customer is responsible for the selection of the person(s) that will be appointed as Admin User(s).
- 3.3. The Admin User is allowed to invite other Users to the Platform on behalf of the Customer. These Users may include persons working for the Customer (directly or indirectly) and (other) external (third) parties. The Admin User and the Customer are fully responsible for the selection and invitation of other Users and the use of the Platform by such Users.
- 3.4. Access to the Platform will be granted by means of e-mail authentication. After verification you will be granted access without undue delay to the Platform.
- 3.5. You agree to keep your login credentials confidential, whether chosen by you or allocated by Climax or Customer, and to not disclose such information to any third party.

- 3.6. You are responsible for any and all activities that occur under your Account. You shall immediately inform Climax of any (suspicion of) unauthorized access under your Account. You may be held responsible for any losses and damages incurred by Climax or any third party due to your own or someone else's use of your Account.
- 3.7. The Admin User and the Customer are responsible for monitoring the access provided to the Platform and if relevant or deemed necessary by the Customer revoking access rights of a User, by deactivating an account or (temporarily) denying access, for example because a User no longer requires access to the Platform or an employee is no longer working for the Customer.
- 3.8. Climax reserves the right to delete your account and/or block the access to (certain parts of) the Platform at any time (temporarily) and without prior notice if Climax deems it necessary. Climax shall not be liable for any damages or costs arising out of or related to the reasonable suspension, deletion and/or limitation of your account or access to and use of the Platform.
- 3.9. The access to and use of the Platform may depend (partly) on the Agreement Climax has concluded with Customer. This means, inter alia, that you may be (temporarily) denied access to your Account in case of (any suspicion of) infringement or violation of the underlying Agreement by Customer.

4. INTELLECTUAL PROPERTY RIGHTS

- 4.1. Climax hereby grants to User a limited, non-exclusive and non-transferable, non-sublicensable right, solely granted for internal business use and subject to the condition precedent of payment by Customer of all amounts owed by it under the Agreement, which right User hereby accepts, to use the Platform for its own organization and solely for the lawful and legitimate purposes for which the Platform is meant.
- 4.2. Climax (and its licensors) own all rights, title, and interest (including, without limitation, patents, copyrights, database rights, trademarks, trade secrets, and all other industrial and intellectual property rights) in and to Platform and any end-user documentation made available to you by us.
- 4.3. Climax reserves all rights not expressly granted to you in these ToU, and if applicable, the Agreement. Climax retains all title and interest in and to any and all existing and future intellectual property rights and all rights related to it.
- 4.4. You (or Customer) remain the owner of (all intellectual property rights relating to) the information made available by you in and for the use of the Platform. By making such information available via the Platform you grant Climax a worldwide, non-exclusive and royalty-free license to use, copy, distribute and disclose any such information for the provision of the Platform, including the right to:
 - 4.4.1. Store and display such information in your Account;
 - 4.4.2. Analyse this information in order to calculate (CO₂e) emissions of Customer and to reformat, display, transfer and create derivative works for analyzing purposes;
 - 4.4.3. Share this information with others on your request.
- 4.5. Whenever you make use of (a part of) the Platform which allows you to save, add, upload, link or share any information, you warrant and represent that you are legally entitled to make such use of the information and that such information does not violate any third party rights, in particular contractual, ownership, intellectual property and data protection rights and indemnify Climax against any third-party claims in this regard.
- 4.6. In case of (any suspicion of) infringement or violation of any intellectual property rights or any other third party rights by you, Climax is entitled to (temporarily) suspend and/or disable your Account and the use of the Platform until clarity is obtained on the correctness of this (suspicion of) infringement or violation.

5. DATA PROTECTION AND PRIVACY

- 5.1. Insofar as Climax processes your personal data and the personal data of others you may provide to Climax in connection with the performance of the Platform, you warrant that Climax (and its (sub-)processors) are entitled to process such personal data. Climax may process and view these data, but do not guarantee its authenticity, accuracy, completeness, compatibility, or quality.

- 5.2. You indemnify Climax against any and all claims by any and all data subjects, and fines or penalty payments imposed on Climax by a supervisory or other governmental body, as a result of or related to a violation of this clause or breach of the GDPR or any other applicable laws and regulations concerning privacy and data protection by you.
- 5.3. For more information on how Climax deals with the protection and processing of your personal data Climax refers you to its privacy statement available via <https://climax.eco/legal>.
- 5.4. Climax reserves the right to monitor, review, retain and/or disclose any of your (personal) data, as necessary to satisfy any applicable law, regulation, legal process or any governmental request, as well as to disclose your identity to any person or third party stating that the information provided by you via the Platform, constitutes a violation of its rights.
- 5.5. You acknowledge that Climax may use your (personal) data for developing, maintaining and improving the Platform, including activities related to products maintenance and troubleshooting (e.g. bug fixing) as well as product management and development (e.g. new features or versions), and for statistical and analytical purposes.

6. NO RELIANCE ON INFORMATION

- 6.1. Although Climax makes reasonable efforts to update the information within the Platform on a regular basis, it makes no representations, warranties or guarantees, whether expressed or implied, that the information will be accurate, complete and up-to-date.
- 6.2. Our Platform may contain information, including personal data, and links to other websites and resources, provided by other users or third parties. Climax has no control over websites, resources or information uploaded by users or originating from third parties and assumes no responsibility or liability for such information.

7. AVAILABILITY

- 7.1. Although Climax will make all reasonable efforts in this respect, it does not warrant that:
 - 7.1.1. the Platform will always be, accessible and available, or will work error-free and uninterrupted at all times;
 - 7.1.2. all information provided by Climax, including all information in the Platform and end-user documentation, will be accurate, complete or up-to-date;
 - 7.1.3. data transmission will be correct and undamaged at all times, this includes the import and export of data;
 - 7.1.4. the quality of any Service, documentation, data, or any other information obtained through the use of the Platform, will meet your expectations or are fit for any particular purpose; and
 - 7.1.5. all errors that may occur in the Platform will be fixed.
- 7.2. Climax reserves the right to revise, modify, discontinue or change any facet of the Platform at any time without providing prior notification to you.
- 7.3. Without prior notice to you, Climax is entitled to (temporarily) suspend the use of the Platform or to restrict the use, to the extent that this is necessary for reasonably required immediate maintenance or for necessary immediate adjustments or improvements to the Platform (e.g. in the event of a security breach).

8. USER RESTRICTIONS

- 8.1. You are responsible for the acquisition and maintenance of the equipment necessary to access and use the Platform, including hardware and internet connections.
- 8.2. You are responsible for any use - including unauthorised use - of the Platform, and will act and behave in accordance with what may be expected of a responsible and careful Internet user. Therefore, when accessing or using the Platform, you agree not to - or permit any other person or third party to - or attempt to:

- 8.2.1. modify, translate, adapt, arrange or create derivative works of the Platform, end-user documentation or any parts thereof;
- 8.2.2. decompile, disassemble or reverse engineer, or otherwise attempt to derive the source code, algorithms, methods, or techniques or any part thereof of the Platform;
- 8.2.3. remove, change or obscure any copyright, trademark or patent notices that appear within the Platform and any end-user documentation made available to you by us;
- 8.2.4. interfere with, damage, or disrupt the normal operation or any security-related features of the Platform;
- 8.2.5. gain unauthorized access to, or restrict or inhibit use by other users of the Platform;
- 8.2.6. pose a security risk to the Platform or any users;
- 8.2.7. use the Platform, or any feature thereof in a way that could or will violate any law or the rights of any person or third party or expose Climax to legal liability;
- 8.2.8. copy and/or use trademarks, domain names, trade names, logos or any other information protected by (intellectual property) rights of others, unless you have been given prior explicit consent to do so;
- 8.2.9. upload, or publish in any other way, materials which you are not allowed to make public by applicable laws or which violate applicable laws, including but not limited uploading and sharing of (personal) information that belongs to another person or third party without that person's or third party's permission; and
- 8.2.10. provide Climax with information, enter or share information via the Platform, that you know is false, fraudulent, deceptive, inaccurate, misleading or that misrepresents your identity.

9. CONFIDENTIALITY

- 9.1. You and Climax mutually undertake to keep confidential all information and data of which the parties become aware in the execution of the Agreement and ToU, including company data, customer data, purchase and sales data. The parties undertake not to disclose such information and data to third parties other than necessary for the performance of the Agreement and ToU without the written consent of the other party, unless applicable mandatory regulations require either party to disclose the information.

10. LIABILITY AND INDEMNIFICATION

- 10.1. The Platform is provided "as-is" and "as-available", to the maximum extent permitted by applicable law. Climax makes no warranties or representations, express or implied, as to any matter, including without limitation non-infringement of third party rights, non-infringement to use data or any other data, merchantability, integration, or fitness for any particular purpose, or that the Platform will meet your requirements or will function properly when used in conjunction with other software or hardware. Furthermore Climax makes no warranties for any third party services or software which may be used to provide access to and use of the Platform.
- 10.2. Climax is only liable for any damages or costs arising out or resulting from the intent or wilful recklessness ('opzet of bewuste roekeloosheid') of its management.
- 10.3. Climax shall not be liable for any direct, indirect or consequential damages, whether in contract, tort, or otherwise, arising out or related to the access or use of its Platform. This includes, without limitation, loss of profits, revenue, business, goodwill, (personal) data, or costs to prevent, mitigate or determine such damages.
- 10.4. If and insofar as for any reason Climax would nevertheless be liable for any costs or damage suffered by you, its total liability is limited to EUR 100,- (one hundred euro's) per year.
- 10.5. You agree to defend, indemnify and hold Climax harmless from any demands, claims, damages, liabilities, expenses or harms, including attorney's fees, of any third party arising out or resulting from:
 - 10.5.1. your use of the Platform in violation of these ToU

- 10.5.2. any information or other material uploaded or transmitted via your Account, smartphone or other device that infringes, violates, or misappropriates the rights of any person or third party (including any intellectual property rights or privacy rights), and
- 10.5.3. the violation of any mandatory law or regulation which applies directly to you.
- 10.6. You shall make all reasonable efforts to aid Climax in defending ourselves against any claims and/or lawsuits, and provide Climax upon first request without undue delay, with all relevant information that may be necessary to defend ourselves against and/or settle such claims and/or lawsuits.

11. TERMINATION

- 11.1. You may terminate your contractual relationship with Climax at any time by stopping your use of the Platform and waiving your right to access and use the Platform by deleting your account. You can request the deletion of your account by contacting Climax.
- 11.2. If and when you have deleted your account, all data in and related to your account will remain at least stored for as long as the Agreement with Customer lasts.
- 11.3. The access to and possibility to make use of the Platform will end when the Agreement between Climax and Customer ends, for whatever reason.
- 11.4. Climax may at any time at its own discretion terminate its contractual relationship with you, including without limitation, in the event you breach any provision of these ToU. In the event of such a termination, you shall destroy all copies and components of the Platform, remove the Platform from your devices and stop using the Platform.

12. GOVERNING LAW AND COMPETENT COURT

- 12.1. These ToU are construed in accordance with and shall be exclusively governed by the laws of the Netherlands.
- 12.2. Any and all disputes between Climax that may arise under or in connection with these ToU shall be exclusively referred to the competent court in Rotterdam, the Netherlands unless mandatory law designates another court.

13. MISCELLANEOUS

- 13.1. If any portion of these ToU is found to be invalid, unenforceable or non-binding, the remaining portion will remain in force and full effect.
- 13.2. Obligations that are by their nature intended to continue after the end of the Agreement and ToU, such as intellectual property, confidentiality, warranties, liability and indemnification, shall continue to exist after the ending of the Agreement and ToU for any reason whatsoever.
- 13.3. Climax may assign its obligations under these ToU to a third party, provided that such third parties shall perform all obligations and observe all rights under these ToU.