Beacon

PLATFORM TERMS OF SERVICE

These terms of service (the "**Agreement**") are entered into by the Customer (as defined on the Order Form) and Beacon Technologies Limited, a company registered in England and Wales (registered number 11664346) whose registered office is at 42 Berkeley Square, London, United Kingdom, W1J 5AW. These terms apply to any Order Forms signed by Customers for access to the Services.

Last updated: 19 October 2022

1 INTERPRETATION

1.1 Definitions:

"Affiliate"	the relevant party's holding companies, subsidiaries and its holding companies' subsidiaries from time to time (as such terms are defined by s. 1159 Companies Act 2006).
"Beacon Data"	means any and all data and information (other than Customer Data) made available to the Customer through the Platform, including data and insights derived from the Customer Data and/or the aggregation of Customer Data with data from other sources (including other Beacon customers).
"Business Day"	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
"Confidential Information"	Information that is proprietary or confidential and is either clearly labelled as such, would be regarded as confidential by a reasonable business person (including, for the avoidance of doubt, the provision of Services under this Agreement), or identified as Confidential Information in clause 11;
"Customer Data"	means:
	(i) the data inputted by the Customer, Users, or Beacon on the Customer's behalf; and / or
	(ii) the data held by the Customer's third-party suppliers, including freight forwarders, where the Customer supplies, or procures the supply, of the data to Beacon,
	(iii) Customer purchase order and shipment data and all associated documents (such as bills of lading, air way bills and other similar documents),
	but does not include any insights derived from such data (either specifically or when aggregated with data from other Beacon customers).

"Documentation"	the specifications and instructions for use of the Services and Beacon's user terms.
"Effective Date"	the date of last signature of the Order Form;
"Fees"	the fees specified in the Order Form;
"Force Majeure Event"	means any circumstance not within a party's reasonable control including, without limitation: (a) acts of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; (f) collapse of buildings, fire, explosion or accident; (g) any labour or trade dispute, strikes, industrial action or lockouts; and (h) interruption or failure of the internet or other utility service.
"Initial Term"	means the period commencing from and including the contract start date specified in the Order Form for the initial term period specified in the Order Form.
"Intellectual Property Rights"	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
"Order Form"	the document or online form entered into between the Customer and Beacon specifying the Services, the Fees and the Term;

"Platform"	the online software applications provided by Beacon as part of the Services, as updated from time to time.
"Renewal Term"	has the meaning given to it in clause 13.2
"Services"	the subscription services for use of the Platform (as specified in the Order Form) provided by Beacon to the Customer under this Agreement together with any implementation, support and/or consultancy services provided by Beacon.
"Term"	the Initial Term and any Renewal Term.
"Users"	those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation.
"Virus"	anything or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
"Vulnerability"	a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability.

1.2   Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3   A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.4   References to clauses and schedules are to the clauses and schedules of this Agreement, and references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

2   USE OF THE PLATFORM

2.1   Beacon grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Users to use the Platform and the Documentation during the Term of this Agreement solely for the Customer's internal business operations.

2.2   In relation to the Users, the Customer undertakes that:

2.2.1 the maximum number of Users that it allows to access and use the Platform and the Documentation shall not exceed the maximum number permitted by Beacon from time to time;

2.2.2 each Authorised User will keep a secure password for their use of the Platform and Documentation, and that each Authorised User will keep their password confidential;

2.3 The Customer acknowledges that:

2.3.1 the Users will not be able to use the Platform unless they have accepted Beacon's most recent acceptable use policy; and

2.3.2 Beacon will have no liability in relation to any Authorised User who cannot use the Platform because they have not accepted Beacon's acceptable use policy.

2.4 The Customer shall not, and it shall procure that the Users shall not:

2.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:

(a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Platform and/or Documentation (as applicable) in any form or media or by any means; or

(b) attempt to decompile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Platform;

provided that nothing in this clause will prevent the Customer from accessing and making copies of the Beacon Data during the Term; or

2.4.2 access all or any part of the Platform and/or Documentation in order to build a product or service which competes with the Services and/or Documentation; or

2.4.3 use the Platform and/or Documentation to provide services to third parties; or

2.4.4 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, the Platform, any Beacon Data and/or Documentation available to any third party except the Users, or

2.4.5 attempt to obtain, or assist third parties in obtaining, access to the Platform and/or Documentation, other than as provided under this Agreement; or

2.4.6 introduce or permit the introduction of, any Virus or Vulnerability into Beacon's network and information systems.

2.5   The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Platform and/or Documentation and, in the event of any such unauthorised access or use, promptly notify Beacon.

2.6   The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any Affiliate of the Customer unless agreed by Beacon in writing. Where rights are granted to an Affiliate of the Customer, the Customer shall ensure its Affiliate complies with the terms of this Agreement and shall be responsible for the acts and omissions of the Affiliate (and its Users) as though they were the Customer's own.

2.7   Beacon may suspend any User's access to, or use of, the Platform if (a) there is a significant threat to the functionality, security, integrity, or availability of the Platform or (b) a User is using the Platform to commit an illegal act or otherwise in breach of the Documentation.

3   BEACON'S OBLIGATIONS

3.1   Beacon shall, during the Term, provide the Services in conformity with the Documentation, and make the Documentation available to the Customer on and subject to the terms of this Agreement and the relevant Order Form.

3.2   Beacon shall use commercially reasonable endeavours to meet any performance and delivery dates agreed with the Customer, but time of performance is not of the essence of the Agreement.

4   DATA PROTECTION

Beacon will act as a data controller in respect of any personal data it receives relating to the Users or that is provided in the context of receiving freight or financial services from Beacon, and will process all such personal data in accordance with all applicable data protection laws and Beacon's privacy notice (available at https://beacon.com/privacy-policy/). To the extent the Customer uploads any other personal data on the Platform, Beacon will act as a data processor in relation to such personal data and the terms of the data processing addendum will apply and form part of this Agreement.

5   CUSTOMER DATA

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

5.2   In the event of any loss or damage to Customer Data, Beacon shall use commercially reasonable endeavours to restore the lost or damaged Customer Data from the latest back up maintained by Beacon. Beacon shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by the Customer or by third parties who are not Beacon's subcontractors.

5.3   The Customer appoints Beacon as its non-exclusive agent for the purposes of obtaining relevant Customer Data held by third parties and authorising such third parties to communicate such data to Beacon or its data aggregator partners in order to display it in the Platform.

6   THIRD PARTY PROVIDERS

6.1   The Customer acknowledges that the Services may enable or assist it to access the content of, correspond with, and integrate data from, third parties via third-party websites or software and that it does so solely at its own risk. Beacon makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website or software. Beacon recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website or software.

6.2   The Customer agrees that, to the extent the Platform is integrated with third-party software or services, the Customer shall accept and enter into the relevant third-party's terms and conditions and pay the requisite licence fees to enable the provision of the Services. The Customer is solely responsible for entering into and complying with the third-party terms and conditions and Beacon has no liability for any issues caused, or additional licence fees incurred, as a result of the Customer integrating any such third party software or services.

6.3   **Carbon credits**. The Customer will have the ability to purchase carbon credits from a third party, Lune Climate Ltd ("**Lune**"), via the Platform. Any such purchases will be subject to Lune's terms and conditions. Where the Customer wishes to purchase a carbon credit, it will notify Beacon via the Platform and Beacon will purchase the carbon credit on its behalf. Beacon will invoice the Customer on a monthly basis for any carbon credits purchased on its behalf, and the Customer will pay such invoices in accordance with clause 8. Beacon gives no warranty as to the suitability of any carbon credits offered by Lune or the accuracy of the information accompanying them.

7   CUSTOMER'S OBLIGATIONS

7.1   The Customer shall:

7.1.1   provide Beacon with all necessary co-operation in relation to this Agreement and all necessary access to such information as may be required by Beacon in order to provide the Services, including providing all relevant Customer Data promptly on commencement of this Agreement;

7.1.2   comply with all applicable laws and regulations with respect to its activities under this Agreement;

7.1.3   carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Beacon may adjust any agreed timetable or delivery schedule as reasonably necessary;

7.1.4   ensure that the Users use the Platform in accordance with this Agreement and the Documentation and shall be responsible for any Authorised User's breach of this Agreement;

7.1.5   obtain and shall maintain all necessary licences, consents, and permissions necessary for Beacon, its contractors and agents to perform their obligations under this Agreement;

7.1.6   instruct and/or authorise its suppliers, carriers, forwarders and all other relevant parties within its supply chain to furnish Beacon with any Customer Data reasonably necessary for the provision of the Services;

7.1.7   ensure that its network and systems comply with the relevant specifications provided by Beacon from time to time; and

7.1.8   be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Beacon's or its provider's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

8   FEES & PAYMENT

8.1   The Customer will pay Beacon the Fees in accordance with this clause. Save as otherwise stated in this Agreement, any payments made are non-refundable.

8.2   The invoicing frequency of the Fees will be specified on each Order Form and the Customer will pay the Fees within 30 days of the date of the relevant invoice.

8.3   All amounts payable are exclusive of VAT or any other applicable sales taxes, which shall be paid by the Customer at the prevailing rate.

8.4   Beacon reserves the right to increase the Fees at the start of each Renewal Term, but will communicate any such increases to the Customer in advance of each Renewal Term.

8.5   If Beacon does not receive payment of the Fees by the relevant due date, it may disable Customer's access to the Services and to charge interest on a daily basis on any overdue amounts at the rate of 3% above the Bank of England base rate. Beacon will not be obliged to provide the Services for so long as any Fees remain outstanding.

8.6   If the Customer believes that any amounts on an invoice are incorrect, it must contact Beacon within 30 days of the due date stated on the disputed invoice with a request for an adjustment or credit.

9   INTELLECTUAL PROPERTY

9.1   The Customer acknowledges and agrees that Beacon and/or its licensors own all Intellectual Property Rights in the Services, the Platform and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services, the Platform or the Documentation.

9.2 Beacon acknowledges and agrees that the Customer and/or its licensors own all Intellectual Property Rights in the Customer Data. The Customer grants Beacon a non-exclusive, royalty-free, perpetual, irrevocable, worldwide licence, together with the right to grant sublicenses to use the Customer Data:

9.2.1 to perform this Agreement;

9.2.2 to carry out research and analysis involving and in relation to the Customer Data, including modifying, aggregating and incorporating Customer Data into the Platform and any predictive models, and disclosing such aggregated data provided that it does not directly or indirectly identify the Customer;

9.2.3 to troubleshoot and further understand, develop, enhance and improve Beacon's and its Affiliate's products and services (including the Services);

9.3 The Customer warrants that the Customer Data, and Beacon's use of the Customer Data as permitted by this Agreement, does not infringe the rights of any third party.

10   INDEMNITY

10.1 **Beacon indemnity.** Beacon will defend the Customer against any claims that the Customer's lawful use of the Platform and/or the Documentation infringes a third party's Intellectual Property Rights (a "**Customer Claim**") and indemnify the Customer for all damages awarded against it and reasonable costs incurred in connection with such Customer Claims, provided that the Customer:

10.1.1 promptly notifies Beacon of any Customer Claims;

10.1.2 gives sole control of the defence and settlement of any Customer Claims to Beacon; and

10.1.3 cooperates with Beacon's reasonable requests to assist the defence of settlement of any Customer Claim.

10.2 **Customer indemnity.** The Customer will defend, indemnify and hold harmless Beacon against any claims, actions, proceedings, losses, damages and reasonable costs arising out of or in connection with the Customer, or its end-users', use of the Platform and/or its integration with third party software at the Customer's direction (a "**Beacon Claim**"), provided that Beacon:

10.2.1 promptly notifies the Customer of any Beacon Claims;

10.2.2 gives sole control of the defence and settlement of any Beacon Claims to the Customer; and

10.2.3 cooperates with Customer's reasonable requests to assist the defence of settlement of any Beacon Claim.

11   CONFIDENTIALITY

11.1 Each party may be given access to Confidential Information from the other. A party's Confidential Information shall not be deemed to include information that:

11.1.1   is or becomes publicly known other than through any act or omission of the receiving party;

11.1.2   was in the receiving party's lawful possession before the disclosure;

11.1.3   is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

11.1.4   is independently developed by the receiving party, which independent development can be shown by written evidence.

11.2   Subject to clause 11.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the Confidential Information for any purpose other than the implementation of this Agreement.

11.3   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.

11.4   A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

11.5   The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Beacon's Confidential Information.

11.6   Beacon acknowledges that the Customer Data constitutes the Customer's Confidential Information which shall not be used except as permitted by this Agreement.

12   LIMITATION OF LIABILITY

12.1   Except as expressly and specifically provided in this Agreement:

12.1.1   the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Beacon shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Beacon by the Customer in connection with the Services, or any actions taken by Beacon at the Customer's direction;

12.1.2   all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

12.1.3   the Services and the Documentation are provided to the Customer on an "as is" basis.

12.2   Beacon:

12.2.1   does not warrant that:

(a)   the Customer's use of the Platform will be uninterrupted or error-free;

(b)   the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or

(c)   the Platform or the Services will be free from Vulnerabilities or Viruses; and

12.2.2   is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

12.3   Nothing in this Agreement limits or excludes the liability of either party for:

12.3.1   death or personal injury caused by Beacon's negligence;

12.3.2   fraud or fraudulent misrepresentation;

12.3.3   any other liability that cannot be limited or excluded under applicable law.

12.4   Neither party will be liable for any indirect, special or consequential loss, costs, damages, charges or expenses, loss of profits, loss of goodwill, loss of data or loss of opportunity.

12.5   Subject to clause 12.3, each party's liability under this Agreement whether in tort (including for negligence or breach of statutory duty), contract, indemnity, misrepresentation, restitution or otherwise will not exceed the total amount of the Fees paid by the Customer in the 12 months preceding the first incident out of which liability arose.

13   **TERM AND TERMINATION**

13.1   This Agreement shall commence on the Effective Date and shall continue for the Initial Term, and thereafter until terminated in accordance with this clause 13.

13.2   Unless specified otherwise on the Order From, at the end of the Initial Term the Agreement will automatically renew for subsequent periods of 12 months (each a "**Renewal Term**") unless either party gives written notice of termination at least 90 days prior to the end of the Initial Term or Renewal Term (as applicable).

13.3   Subject to clause 15.1, either party may terminate this Agreement with immediate effect by giving written notice to the other party if the other party commits a material breach of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so.

13.4   On termination of this Agreement:

13.4.1   except for perpetual licences, all licences granted under this Agreement shall immediately terminate

13.4.2   the Customer shall immediately cease all use of the Platform and/or the Documentation;

13.4.3   each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party (except Beacon may continue to use the Customer Data under the perpetual licence in clause 8.2);

13.4.4   Beacon may continue to use any aggregated or historic Customer Data in accordance with clause 9.2, and will destroy or otherwise dispose of all other Customer Data in its possession or control;

13.4.5   any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced;

13.4.6   clauses which expressly or impliedly survive termination continue in force including clauses 9.2, 9.3, 10, 11, 12, 13.4 and 15.9.

14   VARIATION

Beacon may amend this Agreement at any time by posting a revised version of the Agreement on www.beacon.com. Where Beacon makes any material change to the Agreement it will endeavour to notify the Customer by email. The Customer's continued use of the Services will constitute its acceptance of the modified Agreement.

15   GENERAL

15.1   **Force Majeure.** Neither party shall be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. Where such failure or delay is ongoing for more than 30 days, the party not affected may terminate this Agreement by giving 30 days' written notice.

15.2   **Waiver.** 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, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15.3   **Severance.** If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

15.4   **Entire Agreement.** The Order Form, this Agreement and the documents referred to within them constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any

statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

15.5 **Assignment.** Neither party shall assign or transfer its rights or obligations under this Agreement without the written consent of the other party (which shall not be unreasonably withheld or delayed).

15.6 **No Partnership.** Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

15.7 **Third party rights.** 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) pursuant to the Contracts (Rights of Third Parties) Act 1999.

15.8 **Notices.** 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 sent by email to the other party's email address. Any notices sent to Beacon via email should copy legal@beacon.com in the message. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

15.9 **Governing law.** This Agreement will be governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with it.