**Bioacoustiq Bioacoustic monitoring service and subscriptions terms & conditions**

## The Supplier and its Services

The Customer can find everything it needs to know about the Supplier, and its services on the Supplier's website, in the Supplier Materials or from communicating with staff before placing an Order. The Supplier also confirms the key information to the Customer in writing before accepting an Order, either by email, or by way of a contract details summary.

## Meaning of words

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| Applicable Laws | all applicable laws, statutes, regulations from time to time in force. |
| Business Day | a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business. |
| Charges | the charges payable by the Customer for the supply of the Services by the Supplier, as set out in the Order Confirmation |
| Contract | the contract between the Customer and the Supplier for the supply of the Services comprising the Contract Details, these Conditions, the Supplier Materials and any other document that is expressly incorporated herein. |
| Contract Details | the email confirming acceptance of the Order or a summary in a form decided by the Supplier setting out the relevant details of the contract. |
| Data | means the information captured in the acoustic recording on the Device. |
| Deliverables | all documents, products, software, reports and other materials or items of any kind developed or provided by the Supplier as part of or in connection with the Services, including the Deliverables specified in the Contract Details. |
| Device | the acoustic recording unit provided as part of the Service and constituting a Deliverable. |
| Great Britain | the countries of England, Wales and Scotland. |
| Intellectual Property Rights | patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) 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, those 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. |

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| Losses | all liabilities, damages, losses (including loss of profits, loss of business, loss of reputation, loss of savings and loss of opportunity), fines, expenses and costs (including all interest, penalties, legal costs (calculated on a full indemnity basis) and reasonable professional costs and expenses). |
| Order | the request by the Customer for the Service and Deliverables |
| Services | the services, including any Deliverables, set out in the Contract Details, including all services, functions and responsibilities which are incidental or ancillary to those services or required for their proper and lawful performance. |
| Purpose | the sole purpose of the Device is bio-acoustic recording of sound data. |
| Supplier Materials | all documents, information, software, items and other materials created prior to the Effective Date or wholly outside the scope of the Contract by the Supplier or its suppliers or licensors and which are provided or made available to the Customer in connection with the Services. |

**Services**

The Supplier shall supply the Services to the Customer from the Effective Date in accordance with the Contract.

The Supplier shall perform the Services and deliver the Deliverables in accordance with the performance dates specified in the Contract. Time is not of the essence in relation to the Supplier's performance of the Contract.

In supplying the Services, the Supplier shall:

(a) perform the Services with the care, skill and diligence expected from a supplier reasonably and suitably skilled and experienced in providing services similar to the Services;

(b) maintain all consents, licences and permissions needed to supply the Services in accordance with the Contract;

(c) ensure that the Services and Deliverables conform to the specifications, requirements and standards set out in the Contract and that the Deliverables are fit for the purpose for which they are provided;

(d) ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services, are of the standard expected of a provider of similar services; and

(f) comply with all Applicable Laws regarding the Services and the Supplier Materials.

**Customer obligations**

The Customer shall:

a) provide all information reasonably requested by the Supplier for the provision of the Services;

b) pay the Charges;

c) comply with the Supplier's protocol and instructions regarding the Deliverables and their use, and

d) be responsible for the health and safety of any individual when placing the Device(s) on site and when collecting the Device(s) and accepts that the placement and collection of the Device(s) is at the Customer's risk.

The Customer shall attach and activate the Device in accordance with the Supplier's protocol and shall ensure that the Device is re-packaged for collection in its original packaging and without tampering with the Device.

The Customer accepts and acknowledges that any tampering of the Device, such as, not following the placement guidelines, placing the Device in the incorrect orientation, placing the device in places at risk of water submersion or other forms of external damage, or using the Device beyond the agreed survey period exposes the Device to irreversible damage to the acoustic recording and/or the data captured, resulting in Bioacoustiq being unable to fulfil the Service. If this happens, Bioacoustiq shall not be in breach of its obligations under the Contract and the Customer will not be entitled to a refund of sums paid.

**Intellectual Property**

The Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the following:

a) the Supplier Materials;
b) the Deliverables;
c) the Data;
d) the Device;
e) the Bioacoustiq website;
f) the Bioacoustiq Data Platform, and
g) Bioacoustiq Core.

Bioacoustiq may collect anonymised, de-identified information and audio data relating to the Services and the Customer's use thereof for analytics, for other reasonable internal uses such as quality control, to build the composite metrics and provide benchmarking, train AI models, and in order to improve Bioacoustiq's products and its service offering, provided Bioacoustiq aggregates such anonymised, de-identified information with other anonymous, de-identified information of its other Customers in such a way that the Client cannot reasonably be identified.

Any Intellectual Property Rights in Data, analysis and improvements derived from Bioacoustiq's use of such information shall be owned by Bioacoustiq.

**Order and Acceptance**

The Supplier will contact the Customer to confirm receipt of the Order and then to confirm acceptance.

**Rejection of Orders**

Orders may be rejected, for example, because a Device is unexpectedly unavailable, because the Customer is located outside Great Britain or because the Service was mispriced. If this happens, the Supplier will let the Customer know as soon as possible and refund any sums already paid.

**Charges and Payment**

The Supplier takes a very personal approach to charging, which will be set out in the Order Acceptance or the Contract Details. This means that the Supplier may invoice the Customer for the Service upfront, or it may invoice the Customer at specified intervals such as on delivery of the Device and when the report is available or all sums due may be invoiced once the Service has been completed.

**Payment of invoices**

Invoices are payable within 30 days of receipt.

**No right of set-off**

Business Customers must pay all amounts due in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

**Interest on late payments**

If the Supplier is unable to collect any payment owed by the Customer, interest will be charged on the overdue amount at the rate of 5% a year above the Bank of England base rate from time to time. Interest accrues on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. Interest is payable together with any overdue amount.

**Increases in VAT**

An adjustment to the amount of VAT payable will be made if the rate of VAT changes between the date of the Order and the date of delivery of the Device. This will be the case, unless the Customer has already paid in full before the change in the rate of VAT takes effect.

**Additional Charges**

The Supplier reserves its right to apply additional charges if the Customer fails to provide the information requested or fails to return the Device within the timeframe specified in the Contract Details. If the Device has been damaged/unsealed or if the Device is not returned in its original packaging.

The Device will be provided as a closed unit. It will have been tested, pre-programmed to record Data and the batteries will already have been inserted into the Device. The Supplier will provide the Customer with instructions on how to set the Device to record and check that it is functioning in accordance with the Supplier's instructions (Supplier Materials).

**Ownership of the Device**

At no point will the Customer own the Device that the Supplier provides as part of the Service. This is because the Device is provided to the Customer as part of the Service and must be returned to the Supplier (in strict compliance with the Supplier's instructions) so that the Supplier can provide the Service and the Deliverables.

**Delays outside of the Supplier's control**

The Supplier does not accept responsibility for delays that arise from matters outside of its control. If the provision of the Device is delayed due to an event outside of the Supplier's control, the Customer will be contacted by a member of the Supplier's staff to let the Customer know of the delay and they will tell you what steps are being taken (if this is possible and reasonable) to reduce the delay. Provided the Supplier contacts the Customer and takes steps to reduce the delay (if it is possible and reasonable to do this), the Supplier will not compensate the Customer for the delay. However, if the delay is likely to be substantial the Customer can end the contract and receive a refund for any Services or Deliverables that have been paid for in advance, but not received.

**Landowner's consent**

It is the Customer's responsibility to ensure that it has the landowner's consent to position the Device on their land. The Customer hereby warrants that it has this consent. The Supplier does not accept any responsibility or liability if the Customer does not have the landowner's permission to site the Device on their land. By not having the landowner's consent the Customer accepts all risks if the landowner takes civil or criminal action against the Customer.

In addition to obtaining the landowner's consent, the Customer is responsible for explaining to the landowner that the Device may record human voices, but that this does not constitute personal data on the basis that the recording is not sufficient to directly or indirectly identify a living individual. Bioacoustiq does not accept any responsibility for damage to or removal of a Device from the landowner's site except where it is removed by the Customer in accordance with the Supplier's instructions.

**Deliverables**

The Customer acknowledges and accepts that:

a) time is not of the essence when it comes to the provision of the Deliverables;

b) the Supplier cannot warrant or guarantee the presence of a species even if the Data suggests that a species may be present;

c) the absence of the detection of a species of animal does not mean that the species is not present but that no recording of that species was ascertainable on the Device;

d) it will not make any financial decisions based on the content of the Deliverables;

e) the Deliverables do not constitute advice or any kind of recommendation, and

f) any additional information contained within the Deliverables about a species, such as behaviour, activity, movements around the site, or any other metrics, scores or data provided by Bioacoustiq is for information only and cannot be guaranteed or relied upon.

**Supplier's warranty**.

The Supplier warrants that on delivery, Devices shall:

- conform in all material respects with their description and any relevant specification;
- be free from material defects in design, material and workmanship that affect the operation of the Device other than usual wear and tear;
- be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- be fit only for the purpose held out by the Supplier (bio-acoustic recording).

**Customer Remedies**

Unless an exception applies, and provided:

- the Customer gives the Supplier notice in writing within 5 business days of discovery that a Device does not comply with the Supplier's warranty;
- the Supplier is given a reasonable opportunity of examining the Device of concern; and
- the Device is returned to the Supplier at the Supplier's direction and subject to the Supplier's instructions and requirements,

the Supplier shall, at its option, repair or replace the Device, or refund the price of the defective Device in full and this will be the Customer's sole remedy for breach of the

warranty. These terms shall apply to any repaired or replacement Devices provided by the Supplier.

**Warranty exceptions**

The Supplier will not be liable for a Device's failure to comply with the warranty if:

- the Customer makes any further use of the Device after telling the Supplier it is non-compliant;
- the defect arises because the Customer failed to follow the Supplier's written instructions as to the installation, commissioning, use or maintenance of the Device;
- the Customer alters or attempts to repair the Device; or
- the defect arises because of fair wear and tear, wilful damage, negligence, or abnormal external events such as weather damage, or animal damage (this list is not exhaustive). Further examples can be found in the Supplier Materials.

**Changes**

The Supplier can always change a Service or Deliverable:

- to reflect changes in relevant laws and regulatory requirements;
- to make minor technical adjustments and improvements, for example to address a security threat. These are changes that don't affect your use of the Device; and
- to update digital content, provided that the digital content always matches the Supplier Materials.

Other than the changes specified above, neither the Supplier or Customer can make any changes to the Contract without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

**Term and termination**

The Contract starts when the Supplier confirms acceptance of the Order or the Contract Details are dated and completed.

The Contract continues until both party's obligations have been performed or until it is terminated on either party giving to the other not less than 14 days' notice to terminate, or as set out below.

Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by notifying the other party if:

(a) the other party commits a material breach of any term of the Contract that:

(i) is not capable of remedy; or

(ii) if capable of remedy, is not remedied within a period of 14 days by the other party after being notified to do so;

(b) the other party takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets or its entering a procedure in another jurisdiction with a similar effect to a procedure listed in this condition; or

(c) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

**Limitation of liability**

The Supplier shall not have any liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with any contract between the parties.

The Supplier's total liability to the Customer for all other losses arising under or in connection with any contract between the parties, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to 100% of the charges paid or payable by the Customer under this contract.

Nothing in these terms and conditions shall limit or exclude the Supplier's liability for:

- death or personal injury caused by negligence to the extent preserved by section 2(1) of the Unfair Contract Terms Act 1977;
- fraud or fraudulent misrepresentation;
- breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- defective products under the Consumer Protection Act 1987; or
- any liability that cannot legally be limited.

Except to the extent expressly stated herein, the Supplier excludes all terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 to 5 of the Supply of Goods and Services Act 1982.

**Personal data**

The Supplier is a controller of personal data. The Supplier's use of personal data is set out in the Supplier's Privacy Notice and on its website.

Audio Data does not constitute personal data under the UK General Data Protection Regulation or the Data Protection Act 2018 on the basis that a living individual cannot be directly or indirectly identified from the Audio Data.

**Complaints and disputes**

The Supplier has its own protocol for addressing issues or concerns and will make reasonable efforts to resolve any problems the Customer may have relating to the Supplier, its Deliverables, Devices and Services. Please contact hello@carbonrewild.com.

**Assignment**

The Supplier shall not assign, novate, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Customer (not to be unreasonably withheld or delayed). If the Customer consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all acts and omissions of its subcontractors as if they were its own.

**Governing law and jurisdiction**

These terms are governed by English law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the English law.

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

**Third party rights**

The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**Severance**

If any provision or part-provision of the Contract 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 the Contract.

**Waiver**

A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

A failure or delay to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy

**Notices**

Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

(i) delivered by hand or by pre-paid first-class post or other next working day delivery service to its address specified in the Contract Details; or

(ii) sent by email to the email address specified in the Contract Details.

Any notice shall be deemed to have been received:

(i) if delivered by hand, at the time the notice is left at the proper address;

(ii) if sent by pre-paid first-class post or any other next working day delivery service, at 9.00 am on the second Business Day after posting; or

(iii) if sent by email and provided no non-delivery message applies, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume.