

EARTH AID  
INDIVIDUAL MEMBER AGREEMENT/TERMS OF SERVICE

This Individual Member Agreement/Terms of Service (“Terms of Service”) is between you and Earth Aid Enterprises (“Earth Aid”), a limited liability company registered and headquartered in Washington, DC.

1. **Term and Termination.** These Terms of Service shall take effect on the date you check the box “Yes, I agree to the Earth Aid terms of service” and click “Create My Account” (“Effective Date”), and will continue in effect for three (3) years. At the end of the initial three (3) year period, these Terms of Service shall automatically renew for another three (3)-year period unless you specifically notify Earth Aid that you do not want to renew these Terms of Service. Either party may terminate these Terms of Service if the other party breaches any of its obligations under these Terms of Service and if the breaching party does not remedy the breach within ten (10) days of receiving written notice from the other party.
2. **Definitions.**
  - a. Carbon Financial Instrument (“CFI”) – a financial instrument representing a certain number of Carbon Offset Credits.
  - b. Carbon Offset Credit (“COC”) – a financial instrument representing the reduction of one metric ton of carbon dioxide, or its equivalent in other greenhouse gases.
  - c. Carbon Program Track – Earth Aid’s program through which Members assign their rights in COCs and CFIs or other financial instruments generated from the reduction in Utility usage to Earth Aid in exchange for payment if those COCs and CFIs or other financial instruments are sold. Only individuals who have and pay their own utility accounts or sub-accounts and live in Property as defined in Section 2(k) of these Terms of Service are permitted to participate in the Carbon Rewards Track.
  - d. Rewards Program Track – Earth Aid’s program through which Members transfer their rights in and ownership of COCs and CFIs or other financial instruments generated from the reduction in Utility usage to Earth Aid in exchange for the ability to accrue Points on a monthly basis by reducing their Utility usage.
  - e. Earth Aid Rewards Partners – Businesses that agree with Earth Aid to provide discounts or other offers to Members who earn Points through the Rewards Program Track.
  - f. Emissions Offset Value – the total reduction of energy usage or emission of greenhouse gases from one Member in one year. The Emissions Offset Value can be expressed in terms of COCs and CFIs or potentially other financial instruments that may then be sold.
  - g. Member - a participant in the Carbon Program Track or the Rewards Program Track.
  - h. Member Information – information specific to a Member’s participation in the Program, such as name, address, utility account information, and energy use information. Member Information may also include aggregated information that has been anonymized or de-identified.
  - i. Personally Identifiable Information (“PII”) - information linked to a particular individual, such as name, address, phone number, Social Security number, email address, credit card number, and other financial information.
  - j. Points – Units accrued by Members enrolled in the Rewards Program Track by reducing their Utility usage that shall be redeemable for discounts and offers available on [www.EarthAid.net](http://www.EarthAid.net). Points have no monetary value.
  - k. Property – physical address of the residence or small business that the Member wishes to register with Earth Aid. A Property refers to a unit of living that has one set of Utility accounts.
  - l. Utility – electric, natural gas, and water. In the future this may include similar resources used on Members’ registered Property.
3. **Member Representations.** I agree and acknowledge the following:

- a. I will comply with these Terms of Service and any other conditions of being a Member.
- b. I automatically will be enrolled in the Rewards Program Track unless I opt in to the Carbon Program Track by emailing carbontrackoptin@earthaid.net or, effective by December 15, 2009, by altering the settings in the Account Settings section of EarthAid.net.
- c. If I opt in to the Carbon Program Track pursuant to Section 3(c) of these Terms of Service, I further agree and acknowledge:
  - i. The Property I am registering falls within the definition of the term "Property" as defined in Section 2(k) of these Terms of Service. I am authorizing Earth Aid to measure, calculate, and market any Emissions Offset Value or value of any change in Utility usage generated from my Property which may have monetary value in the form of COCs and CFIs or other financial instruments. I legally own the Emissions Offset Value and the value of any change in other Utility usage of my registered Property.
  - ii. I hereby assign the right to aggregate and market the COCs and CFIs or other financial instruments associated with the reduction in Utility usage on my registered Property to Earth Aid. This assignment shall remain in effect until these Terms of Service terminate. I understand that I cannot simultaneously assign this right to any other entity. I consent to have my address included in the registry of Registered Property Earth Aid is compiling and that assigning this right to another entity would violate the integrity of the Carbon Program Track.
  - iii. Earth Aid will measure my Utility usage by logging in to my online Utility accounts and downloading the usage data for my registered Property. To allow Earth Aid to measure the amount of my Utility usage, I understand that I must provide Earth Aid with the username, password, and/or account number, and/or any other necessary credentials for each Utility account associated with my registered Property. By providing Earth Aid with this information, I certify that I own the account(s) I have registered with Earth Aid, I authorize Earth Aid to act as my agent by logging into those Utility accounts to obtain usage data for my registered Property, and I have the right to provide this authorization.
  - iv. I understand that the measurement, calculation, and marketing of any COCs, CFIs, and/or other financial instruments generated from a reduction in Utility usage my registered Property will be at Earth Aid's sole discretion at the time of the measurement and calculation, and that Earth Aid makes no warranty as to the marketability or market value of the COCs, CCIs, or other similar financial instruments.
- d. If I do not opt in to the Carbon Program Track pursuant to Section 3(c) of these Terms of Service, I understand that I automatically will be enrolled in the Rewards Program Track and further agree and acknowledge:
  - i. I am authorizing Earth Aid to measure, calculate, and market any Emissions Offset Value or value of any change in Utility usage generated from my Property which may have monetary value in the form of COCs and CFIs or other financial instruments. I legally own the Emissions Offset Value and the value of any change in other Utility usage of my registered Property.
  - ii. I hereby transfer the right to aggregate and market the COCs and CFIs or other financial instruments associated with the reduction in Utility usage on my registered Property to Earth Aid, and I transfer the Emissions Offset Value and the value of any change in other Utility usage of my registered Property to Earth Aid. I understand that I cannot simultaneously transfer either this right to aggregate and market the financial instruments associated with the reduction in Utility usage or this Emissions Offset Value or other value to any other entity. I consent to have my address included in the registry of Registered Property Earth Aid is compiling and that providing such consent to another entity would violate the integrity of the Carbon Program Track and the Rewards Track Program.

- iii. Earth Aid will measure my Utility usage by logging in to my online Utility accounts and downloading the usage data for my registered Property. To allow Earth Aid to measure the amount of my Utility usage, I understand that I must provide Earth Aid with the username, password, and/or account number, and/or any other necessary credentials for each Utility account associated with my registered Property. By providing Earth Aid with this information, I certify that I own the account(s) I have registered with Earth Aid, I authorize Earth Aid to act as my agent by logging into those Utility accounts to obtain usage data for my registered Property, and I have the right to provide this authorization.
- iv. I understand that the measurement, calculation, and marketing of any COCs, CFIs, and/or other financial instruments generated from a reduction in Utility usage my registered Property will be at Earth Aid's sole discretion at the time of the measurement and calculation, and that Earth Aid makes no warranty as to the marketability or market value of the COCs, CCIs, or other similar financial instruments.

e. I understand that the Program is supported in part by advertising revenue and that Earth Aid may use my Member Information to (a) improve the Earth Aid Carbon Program Track or Rewards Program Track; (b) deliver targeted banner or other advertisements on the Earth Aid website; and (c) send me advertisements for third-party products via email or other mechanisms.

f. I understand that if I fail to comply with these Terms of Service, Earth Aid may, at its sole discretion, terminate this Individual Member Agreement/Terms of Service, prohibit me from participating in the Carbon Program Track or Rewards Program Track in the future, and/or cause me to forfeit title to any COCs, CFIs, Points, or any other financial instrument generated from my registered Property.

g. I will not assign this Individual Member Agreement/Terms of Service without the prior written approval of Earth Aid. Assignments in violation of this clause will be null and void.

h. I specifically agree to waive any and all claims, demands, actions or any rights to assert any type of legal claim against Earth Aid or other Members for any reason whatsoever relating to, or arising from, participation in the Carbon Program Track or Rewards Program Track. I will not assert against Earth Aid (or any of its affiliates, officers, directors, employees, agents, licensors, suppliers, or other Participants), any legal claims, demands, or actions, however described, in law or in equity arising from or relating to the Carbon Program Track or Rewards Program Track.

i. I agree to defend, indemnify and hold Earth Aid, its affiliates, officers, directors, employees, agents, licensors, suppliers, and other Members harmless from and against any actual or alleged claims, actions, demands, costs, fees, liabilities, expenses and settlements (including, without limitation, reasonable legal, accounting and expert fees), arising from or related to my participation in the Carbon Program Track or Rewards Program Track, including without limitation any breach of any representations, warranties, terms and/or conditions set forth under these Terms of Service. Earth Aid will provide notice to me within a reasonable time of any such claim, suit or proceeding and shall reasonably cooperate with me, at my expense, in my defense of any such claim, suit or proceeding.

**4. Earth Aid Representations.** Earth Aid agrees and acknowledges the following:

- a. Members may be asked to submit PII. Earth Aid agrees to use reasonable and appropriate technical, administrative, and physical security controls to protect Members' PII from disclosure to unauthorized parties. Earth Aid agrees not to disclose Members PII to third parties, except in cases where Earth Aid has hired a third party or parties to perform certain functions on its behalf. In such cases, Earth Aid will enter into an agreement with that third party to ensure that the third party will take appropriate steps to protect the PII and will only use the PII to perform the services for Earth Aid.
- b. Earth Aid shall, at its sole discretion, create COCs, CFIs, and/or other financial instruments from the Emissions Offset Value or other change in Utility usage of the Member's registered Property by measuring the reduction in Utility usage.
- c. Earth Aid agrees to transfer to Members who have opted in to the Carbon Program Track pursuant to

Section 3(c) of these Terms of Service no less than fifty percent (50%) of any revenue realized from the sale of COCs, CFIs, and/or other financial instruments generated by the Member's registered Property unless doing so would result in financial hardship for Earth Aid.

- d. Earth Aid agrees to provide Earth Aid Rewards Points ("Points") to Members who do not opt in to the Carbon Program Track pursuant to Section 3(c) of these Terms of Service and are automatically enrolled in the Consumer Rewards Program Track pursuant to Section 3(d). Such Points shall be redeemable for discounts or other offers at Earth Aid Rewards Partners. These Points have no monetary value.

## 5. Miscellaneous.

- a. **Representations & Warranties.** Each party represents and warrants that it has the legal power and authority to enter into this Individual Member Agreement/Terms of Service, and will at all times comply with all laws, rules and regulations applicable to their business and dealings under these Terms of Service.
- b. **Disclaimer of Warranties.** THE CARBON PROGRAM TRACK AND REWARDS PROGRAM TRACK ARE PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY EARTH AID. ANY SUGGESTIONS OR TIPS MADE BY EARTH AID ARE MADE IN GOOD FAITH, BUT CANNOT BE RELIED UPON. EARTH AID MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, SECURITY, ACCURACY OR COMPLETENESS OF THE ESTIMATES OF MEMBERS' CARBON OFFSET CREDITS, CARBON FINANCIAL INSTRUMENTS, OR OTHER FINANCIAL INSTRUMENTS, OR THE VALUE, DEMAND, OR SALEABILITY OF THOSE CREDITS, CARBON FINANCIAL INSTRUMENTS, OR OTHER FINANCIAL INSTRUMENTS GENERATED FROM THE CHANGE IN UTILITY USAGE ON THE REGISTERED PROPERTY. EARTH AID DOES NOT REPRESENT OR WARRANT (A) THAT YOUR CARBON OFFSET CREDITS, CARBON FINANCIAL INSTRUMENTS, OR OTHER FINANCIAL INSTRUMENTS WILL BE SOLD; (B) THAT YOUR CARBON OFFSET CREDITS, CARBON FINANCIAL INSTRUMENTS, OR OTHER FINANCIAL INSTRUMENTS WILL HAVE ANY MONETARY VALUE; (C) THAT MEMBERS WILL RECEIVE ANY COMPENSATION FOR THE CARBON OFFSET CREDITS, CARBON FINANCIAL INSTRUMENTS, OR OTHER FINANCIAL INSTRUMENTS GENERATED BY THE MEMBER'S REGISTERED PROPERTY; OR (D) THAT MEMBERS WILL RECEIVE A SPECIFIED PERCENTAGE OF ANY REVENUE RESULTING FROM THE SALE OF YOUR CARBON OFFSET CREDITS, CARBON FINANCIAL INSTRUMENTS, OR OTHER FINANCIAL INSTRUMENTS. EARTH AID DOES NOT REPRESENT OR WARRANT THAT ANY POINTS ACCRUED WILL BE ABLE TO BE REDEEMED FOR PRODUCTS AND/OR SERVICES OF ANY VALUE.
- c. **Limitation of Liability.** IN NO EVENT SHALL EARTH AID'S AGGREGATE LIABILITY UNDER THESE TERMS OF SERVICE EXCEED THE AMOUNTS ACTUALLY PAID TO THE MEMBER IN THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EARTH AID AND/OR ANY OF ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE CARBON PROGRAM TRACK AND/OR THE REWARDS PROGRAM TRACK, INCLUDING BUT NOT LIMITED TO CALCULATION OF MEMBER'S CARBON OFFSET CREDITS, CARBON FINANCIAL INSTRUMENTS OR OTHER FINANCIAL INSTRUMENTS, INABILITY TO SELL MEMBERS' CARBON OFFSET CREDITS, CARBON FINANCIAL INSTRUMENTS, OR OTHER FINANCIAL INSTRUMENTS, INABILITY TO REDEEM POINTS AT ANY BUSINESSES, AND ANY HARM OR INJURY RESULTING FROM MEMBERS' FOLLOWING SUGGESTIONS OR TIPS MADE BY EARTH AID, OR FOR ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE, IN THE CARBON PROGRAM TRACK AND/OR REWARDS PROGRAM TRACK [EVEN IF SUCH PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.]

**6.** Updates or Amendments to these Terms of Service. These Terms of Service, any provision hereof, or any other documents incorporated by reference may be updated or amended at any time by Earth Aid. Any such changes to these Terms of Service will be effective on the date that Earth Aid posts the modified version of these Terms of Service on its website at earthaid.net. Continued participation in the Carbon Program Track or the Rewards Program Track after such changes have taken effect constitutes acceptance of all changes.

- 7.** Choice of Law. These Terms of Service shall be governed by District of Columbia law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with these Terms of Service shall be subject to the exclusive jurisdiction of the state and federal courts located in the District of Columbia.
- 8.** Severability/Waiver. If any provision of these Terms of Service is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. The failure of Earth Aid to enforce any right or provision in these Terms of Service shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Earth Aid in writing.
- 9.** Entire Agreement. These Terms of Service comprise the entire agreement between me and Earth Aid with respect to my participation in the Carbon Program Track or the Rewards Program Track and supersede all prior or contemporaneous negotiations, discussions, terms and conditions or agreements, whether written, oral or online, between the parties regarding the subject matter contained herein. In the event of any conflict between these Terms of Service and such additional terms and conditions, these Terms of Service shall govern.

By checking the box “Yes, I agree to the Earth Aid terms of service” and clicking “Create My Account”, you acknowledge and agree that you have read these Terms of Service and understand them, and that you agree to and consent to be bound by all of the terms and conditions of these Terms of Service. In particular, your acceptance of these Terms of Service includes without limitation your full acceptance of the terms of these Terms of Service.