

## **XEAL TERMS AND CONDITIONS**

These Terms and Conditions (“T&Cs”) are incorporated into the Order Form (“Order Form”) executed by and between EVE Energy Ventures, Inc., a Delaware corporation with a principal address of 594 Broadway #805, New York, NY 10012 (d/b/a Xeal Energy) (“Licensor”) and the party designated as “Licensee” on the Order Form (“Licensee”) (the applicable Order Form(s) together with the T&Cs, the “Agreement”). These T&Cs shall be effective as of the last signature date set forth on the Order Form (“Effective Date”). Licensor and Licensee are each referred to as a “Party” individually and the “Parties” collectively. Licensor and Licensee agree as follows:

1. **BACKGROUND.** Licensor markets and sells electric vehicle charging stations (i.e., the “Hardware” listed on the Order Form) incorporating Licensor’s proprietary charging management software platform to manage the Hardware (the “Software Platform”) and also including:
  - 1.1. a web-based dashboard (“Dashboard”); and
  - 1.2. iOS and Android mobile apps made available by Licensor through publicly available app stores (“Apps”) for download and use by individuals (“End Users”) who live, work or otherwise visit the Property (as defined and set forth on the Order Form(s) to access and use the Hardware to charge their electric vehicles at the Property.

Each of the Software Platform, Dashboard and Apps, collective or separately, shall be referred to as the “Software”. The Hardware together with the Software shall be referred to collectively as the “Charging Platform”.

Licensee wishes to procure the Hardware pursuant to the Order and wishes to license and use the Software to enable End Users to utilize the Hardware to charge their electric vehicles at the Property pursuant to the terms and conditions of this Agreement. Licensee agrees and acknowledges that the Hardware may be purchased directly from Licensor or indirectly through a reseller (“Reseller”), in each case as set forth on the Order Form.

## **2. SOFTWARE.**

- 2.1. **Software Platform & Dashboard License.** Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a limited, non-exclusive, revocable, non-transferable (except as set forth in Section 13.4) right and license to use, and to

permit Authorized Users (as defined below) to use, the Software Platform & Dashboard solely in conjunction with the Hardware. For the purposes of this Agreement, “Authorized Users” means those uniquely identified individuals who are: (a) employees, contractors, consultants, agents or other representatives of Licensee, and (b) who are authorized by Licensee to use the Software Platform & Dashboard, regardless of whether those individuals are actively using the Dashboard at any given time.

## 2.2. **Software – Restrictions and Requirements.**

2.2.1. No licenses or rights are granted by implication or otherwise, except as expressly stated in Section 2.1 above. Licensor (and its licensors) own and retain all right, title and interest in and to the Software and all intellectual property rights therein.

2.2.2. **No Reverse Engineering.** Licensee shall not (a) translate, decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code or algorithms from the Software, (b) interfere with, modify or disable any features or functionality of the Software, including without limitation any mechanisms used to restrict or control the Software, such as anti-circumvention measures, or (c) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any protection mechanisms for the Software.

2.2.3. **No Sale or Distribution.** Licensee shall not sub-license, rent, lease, timeshare, loan, sell, or distribute the Software or the Charging Platform or any part thereof. Licensee shall not create derivative works of the Software or any part thereof, nor publicly display or perform the Software.

2.3. **Software Updates.** Licensor shall maintain the Software during the Term and will provide to Licensee updates and releases of the Software Platform and Dashboard (“Updates”) as may be needed to maintain the Software Platform and Dashboard. All Updates to the Software Platform and Dashboard shall be subject to these T&Cs.

2.4. **Apps.** Licensor shall make the Apps available to End Users (and Licensee) via publicly available downloadable app stores promptly after the Effective Date. Use of the Apps is governed by separate terms and conditions, a copy of which may be found at <https://xealenergy.com/terms-of-service/>, (“Online Terms of Service”). At Licensor’s discretion, Licensor may update or revise the Apps pursuant to the Online Terms of Service.

### 3. HARDWARE.

- 3.1. **Purchase and Sale of Hardware.** Licensee hereby agrees to purchase from Licensor or Reseller (as set forth on the Order Form), and Licensor or Reseller, as applicable, agrees to sell to Licensee, the number of units of the Hardware set forth in one or more applicable Order Forms (“Quantity”), pursuant to the payment terms further set forth therein and in Section 4 below.
- 3.2. **Delivery.** Licensor shall deliver the Quantity of Hardware as set forth in an applicable Order Form to buyer at the Property or at such other address as may be specified in the applicable Order Form (“Delivery Point”). Title to and risk of loss of the Hardware shall pass from Licensor to Licensee upon shipment of the Hardware to the Delivery Point (and subject to Licensor’s receipt in full of the Hardware Purchase Price).
- 3.3. **Third Party Installation.** Licensor is not a licensed contractor and shall not provide any construction or installation work for the Hardware (“Installation Services”). Licensor will make available a third-party installation company to provide the Installation Services (“Third-Party Installer”). The Third-Party Installer shall install and connect the Hardware to the Property pursuant to a separate agreement between Installer and Licensee (“Installation Agreement”) setting forth the terms and conditions under which Third Party Installer will perform the Installation Services. Any fees due by Licensee for the Installation Services will be set forth in the Installation Agreement and paid to the Third-Party Installer pursuant to the terms therein. Any estimated fees or requested installation dates as may be set forth on an Order Form are merely estimates; final fees or installation dates shall be governed by, and as set forth in, the Installation Agreement. Licensor shall reasonably cooperate with and provide reasonable assistance to the Third-Party Installer and Licensee regarding the Installation Services.

### 4. CHARGING REVENUES; FEES; PAYMENTS.

#### 4.1. **Amounts Payable by Licensor**

- 4.1.1. **Net Charging Revenues.** Licensor shall charge End Users for electricity used by End Users during vehicle charging sessions initiated through the Charging Platform (“Gross Charging Revenues”). Licensor shall pay to Licensee the Net Charging Revenues (as defined below) once per applicable calendar quarter period during the Term, payable within thirty (30) days following the end of the prior calendar quarter period. Licensor shall make payment of the Net Charging

Revenues to Licensee via direct payment to Licensee's bank account; provided, however, for payment via check, Net Charging Revenues owed will be remitted on an annual basis, within thirty (30) days following the end of the prior calendar year period. For the purposes of this Agreement, "Net Charging Revenues" shall mean Gross Charging Revenues less the aggregate of (i) the Xeal Revenue Share plus (ii) the Transaction Fees; "Xeal Revenue Share" shall mean the amount equal to the Xeal Revenue Share Percentage (as set forth in the Order Form) multiplied by the Gross Charging Revenues; and "Transaction Fees" shall mean (a) any and all third-party expenses (e.g., credit card transaction fees) plus any and all federal, state and local excise, sales, use, VAT and similar transfer taxes and duties paid or required to be withheld by Licensor (except for such taxes based on Licensor's net income). All Gross Charging Revenues collected by Licensor shall be tracked and reported in the Dashboard.

## **4.2. Amounts Payable by Licensee**

**4.2.1. Hardware Purchase Price.** Licensee shall pay to Licensor or Reseller, as set forth on the Order Form, an amount equal to the total amount for the Hardware set forth in the Order Form (the "Hardware Purchase Price"). The Hardware Purchase Price shall be due and payable as set forth in the applicable Order Form.

**4.2.2. Software License Fee.** Licensee shall pay to Licensor the Software License Fee, as set forth in the Order Form ("Software License Fee"). The Software License Fee shall be for the applicable Software License term as set forth in the Order Form ("Software License Term"), and includes Updates. The Software License Fee shall be due and payable as set forth in the applicable Order Form. In the event this Agreement auto-renews pursuant to Section 12, Licensor reserves the right to increase the Software License Fee no more than five percent (5%) per annum over the then-current rate.

**4.3. Payment Terms.** Except as expressly stated in this Section 4 or as set forth in an applicable Order Form, all amounts due and payable by Licensee under this Agreement shall be paid in immediately available funds within thirty (30) days after the date of invoice therefor. All amounts due are exclusive of federal, state and local excise, sales, use, VAT and similar transfer taxes, and any duties, and except for taxes based on Licensor's net income, Licensee shall be responsible for all such items. Payments due by either party shall be subject to the lesser of one and one-half percent (1.5%) monthly interest, or the highest rate permitted by applicable law, on all late payments ("Late Fee") with respect to a Party's failure to pay any applicable fees or payments to the other

Party when due; provided, however, that the payee hereunder has provided the payor all payment information, including without limitation banking/ACH identifiers. In the event of a Party's continued failure to pay amounts due for more than two (2) consecutive months, then following at least ten (10) business days written notice, the non-breaching Party may withhold payments due until all such past due amounts (including any accrued Late Fee) are satisfied.

**4.4. Record Keeping; Audit.** Licensor shall keep and maintain books and records with respect to Gross and Net Charging Revenues (the "Payment Records"). Licensee shall have the right to virtually audit such Payment Records once per year with respect to Charging Platforms installed on Properties owned or managed by Licensee. Such audit shall occur during Licensor's regular business hours, conducted so as to not unduly interfere with Licensor's normal business, and on reasonable prior written notice of at least thirty (30) days. The audit may be conducted by a reputable third party certified public accountant that has experience reviewing financial operating records. The audit must be delivered concurrently to Licensor and Licensee. To the extent that the audit results are not disputed, Licensor shall reimburse Licensee for any overcharge revealed by the audit, and Licensee shall pay Licensor any undercharge revealed by the audit. The audit shall be performed at Licensee's sole cost and expense, unless after resolution of all disputes it is determined that Licensee's Net Charging Revenues were underpaid to Licensee by more than 10% over the period covered by the audit, in which case Licensor shall pay all costs and expenses relating to the audit (in addition to any underpayment).

## **5. SOFTWARE PLATFORM SUPPORT**

**5.1. Onboarding.** A representative of Licensor will confer with a representative of Licensee to provide training on access and navigation of the Software Platform and Dashboard, at no charge to Licensee.

**5.2. Support.** Licensor will provide technical support to Licensee with respect to the Software Platform and Dashboard as set forth in the Order Form.

**5.3. Uptime.**

**5.3.1. Uptime Guarantee.** The Charging Platform shall be available to Authorized Users 100% of the time, measured monthly ("Uptime Guarantee"). For purposes of calculating the Uptime Guarantee, downtime shall begin to accrue based on the timestamp reported and continues until the availability of the Charging Platform is

restored. The Uptime Guarantee calculation shall exclude: periods of scheduled maintenance; periods of downtime of the Hardware; periods of downtime resulting from Licensee requests for maintenance (other than as a result of a downtime event); outages caused by third party network connections or utilities, including internet service providers or cellular network providers; periods when Licensor blocked access to the Charging Platform in accordance with the Online Terms of Service or other Licensor policies; downtime occurring during the first thirty (30) days of operation after the initial installation; where a Property includes multiple Customer Hardware units and more than 80% of such units are still operational; or other reasons beyond Licensor's reasonable control, including without limitation damage or vandalism to the Charging Platform and parking spot unavailability.

**5.3.2. Remedy.** If the Software Platform fails to meet the Uptime Guarantee in a given month for reasons other than those excluded in Section 5.3.1 ("Uptime Default"), Licensor shall credit to Licensee's account one month of the Software License Fee. Notwithstanding the foregoing: (i) no remedy for an Uptime Default shall be due to Licensee unless Licensee notifies Licensor of such Uptime Default within twenty-four (24) hours from the time the downtime commences; and (ii) Licensor will not provide Licensee with a remedy for more than one Uptime Default per month. This Section 5.3 sets forth Licensee's sole remedy, and Licensor's sole obligation, in the event of a breach of the Uptime Guarantee.

## **6. LICENSEE OBLIGATIONS**

- 6.1. **Property.** Licensee shall provide a clean and safe environment at the Property for the delivery of the Hardware, and the installation, maintenance and access of the Hardware as necessary by the Third-Party Installer or Licensor, as applicable.
- 6.2. **Power.** Licensee shall be responsible for the provision of continuous power to the Hardware at the Properties.
- 6.3. **Authority; Access.** Licensee represents and warrants that (i) they have the authority to enter into this Agreement with respect to the Property; and (ii) they have procured or otherwise obtained all rights, licenses and permits of all kind for the installation and operation of electric vehicle chargers.
- 6.4. **Brand Features License.** Licensee grants to Licensor a limited, revocable, worldwide, non-transferable, non-exclusive, non-sublicensable, fully-paid up, royalty-free license during the Term of this Agreement to use Licensee's trademark, logo or brand ("Brand

Features”) for the sole purpose of listing Licensee as a customer along with other customers on its website and in other marketing collateral. Licensor shall use the Brand Features according to Licensee’s branding guidelines, provided by Licensee to Licensor, and agrees not to use Licensee’s Brand Features in any manner that is illegal, immoral, misleading, false, or derogatory. All goodwill from Licensor’s use of the Brand Features shall inure to Licensee.

## 7. **WARRANTIES.**

### 7.1 **Licensor Warranties.**

7.1.1. As of the date of delivery of the Hardware at the Property, the Hardware furnished in accordance with this Agreement will be of good quality, new, and free from material defects in design, materials, and workmanship and will function under normal use and circumstances;

7.1.2. For a period of ninety (90) days following the Service Commencement Date, the Software Platform and Dashboard will be free from defects in material and workmanship (including viruses, worms or other malicious or destructive code), and will substantially conform to the requirements of this Agreement and Licensor’s user’s manual as they exist at the date of deliver; and

7.1.3. the Software Platform and Dashboard will not infringe on the patent or copyright of any third parties.

7.2. **Customer Hardware Warranty.** Licensor hereby provides to Customer a warranty for the Customer Hardware as set forth at <https://xeal.page.link/Warranty>, incorporated by reference into these T&Cs, and as updated from time to time by Licensor in its sole discretion.

7.3. **DISCLAIMER OF HARDWARE WARRANTY.** EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED FOR IN THIS AGREEMENT, LICENSOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE HARDWARE. LICENSOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES THAT THE HARDWARE IS FREE OF DEFECTS, ARE ABLE TO OPERATE ON AN UNINTERRUPTED BASIS, ARE NON-INFRINGEMENT, AND THE IMPLIED WARRANTIES THAT THE HARDWARE IS MERCHANTABLE, RELIABLE, OF SATISFACTORY QUALITY, ACCURATE, OR FIT FOR A PARTICULAR PURPOSE, UNLESS SUCH IMPLIED WARRANTIES ARE

LEGALLY INCAPABLE OF EXCLUSION. LICENSOR DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE HARDWARE IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE.

7.4. **DISCLAIMER OF INSTALLATION SERVICES WARRANTY.** LICENSOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE INSTALLATION SERVICES, IN TERMS OF QUALITY, WORKMANSHIP, MATERIALS, OR OTHERWISE.

7.4.1. **RELEASE OF LIABILITY FOR INSTALLATION SERVICES.** LICENSEE HEREBY FULLY AND UNCONDITIONALLY RELEASES LICENSOR FROM ANY LIABILITY ARISING OUT OF OR RELATED TO THE INSTALLATION SERVICES OR THE INSTALLATION AGREEMENT. LICENSEE UNDERSTANDS THAT THIS RELEASE SHALL EXTEND TO EVEN THOSE CLAIMS OF WHICH EITHER OR BOTH PARTIES HAD NO KNOWLEDGE. AS SUCH LICENSEE HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE 1542, WHICH PROVIDES:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

7.4. **DISCLAIMER OF SOFTWARE WARRANTY.** EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN THIS AGREEMENT, THE SOFTWARE PLATFORM AND DASHBOARD ARE PROVIDED “**WITH ALL FAULTS**” ON AN “**AS IS**” BASIS. WITH THE EXCEPTION OF THE WARRANTIES EXPRESSLY PROVIDED IN THESE TERMS AND CONDITIONS, LICENSOR DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES THAT THE SOFTWARE PLATFORM AND DASHBOARD ARE FREE OF DEFECTS, ARE ABLE TO OPERATE ON AN UNINTERRUPTED BASIS, ARE NON-INFRINGEMENT, THAT ERRORS WILL BE CORRECTED, AND THE IMPLIED WARRANTIES THAT THE SOFTWARE PLATFORM AND DASHBOARD ARE MERCHANTABLE, RELIABLE, OF SATISFACTORY QUALITY, ACCURATE, OR FIT FOR A PARTICULAR PURPOSE, UNLESS SUCH IMPLIED WARRANTIES ARE LEGALLY INCAPABLE OF EXCLUSION. LICENSOR DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE PLATFORM AND DASHBOARD IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE.



## 8. LIMITATION OF LIABILITY.

8.1. WITH THE EXCEPTION OF CLAIMS UNDER SECTION 9 (INDEMNIFICATION) AND CLAIMS REGARDING A BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER SECTION 11, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE GREATER OF THE AGGREGATE FEES ACTUALLY PAID OR PAYABLE BY LICENSEE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING SUCH CLAIM OR ANY RECOVERY THAT MAY BE AVAILABLE TO SUCH PARTY UNDER APPLICABLE INSURANCE PROCEEDS.

8.2. WITH THE EXCEPTION OF CLAIMS UNDER SECTION 9 (INDEMNIFICATION) AND CLAIMS REGARDING A BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER SECTION 11, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE, INCLUDING WITHOUT LIMITATION ANTICIPATED OR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, DATA LOSS, OR COMPUTER FAILURE OR MALFUNCTION, EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER THE CLAIM OR LIABILITY IS BASED UPON ANY CONTRACT, TORT, BREACH OF WARRANTY OR OTHER LEGAL OR EQUITABLE THEORY.

8.3. THE LIMITATIONS SET FORTH ABOVE SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDIES SET FORTH HEREIN. EACH PARTY ACKNOWLEDGES AND AGREES THAT THEY HAVE FULLY CONSIDERED THE FOREGOING ALLOCATION OF RISK AND FIND IT REASONABLE, AND THAT THE FOREGOING LIMITATIONS ARE AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

9. **INDEMNIFICATION.** Each Party ("Indemnifying Party") will defend and hold the other Party and its directors, officers, employees, agents, contractors, successors and assigns (collectively, "Indemnified Parties") harmless from any third-party claims, causes of action, suits, proceedings and any losses, damages, injury, costs and expenses (including reasonable and actual legal or other professional fees and expenses) awarded against or incurred or paid by the Indemnified Parties to a third party (each a "Claim") as a result of or in connection with (i) any material breach of Indemnifying Party's representations,

warranties, covenants and obligations under this Agreement; (ii) Indemnifying Party's gross negligence or willful misconduct in performing its obligations under this Agreement; (iii) Indemnifying Party's failure to comply with all applicable laws; or (iv) with respect to Licensee as the Indemnified Party, any actual or alleged infringement or misappropriation of any third party patent, trademark, copyright, trade secret arising from or in connection with the Software Platform and Dashboard.

The Indemnified Party shall promptly notify the Indemnifying Party in writing of any Claim, promptly give the Indemnifying Party the opportunity to assume sole control of the defense or settlement of such Claim, and give the Indemnifying Party all necessary information and assistance (at the Indemnifying Party's sole expense) in connection with such defense and settlement. Either Party shall have the right to retain counsel and participate in such defense or settlement (provided however that if Indemnified Party elects to retain its own counsel, it shall be done at Indemnified Party's sole expense). Neither Party shall settle any matter subject to indemnification without the prior written consent of the other Party; provided, however, that such consent shall not be required if the settlement will not impose any restriction or liability on the other Party that is not fully discharged.

## 10. **CONFIDENTIALITY; DATA SECURITY.**

10.1. **Confidential Information.** Each Party ("Receiving Party") agrees to maintain the confidentiality of all information supplied to it by or on behalf of the other Party ("Disclosing Party") or observed by the Receiving Party's personnel, that is non-public, that would be reasonably understood to be confidential to the Disclosing Party, or that is marked or otherwise identified as confidential or proprietary at the time of disclosure, including without limitation all information concerning the Disclosing Party's past, present, future or potential employees, clients, customers, organization, work, know how, finances, strategies, plans, systems, software and products, and any logins or credentials provided hereunder ("Confidential Information"). The Receiving Party shall not use any Confidential Information of the Disclosing Party except for the purpose of performing its obligations under this Agreement. The Receiving Party shall not disclose such information except to its employees, contractors, consultants, agents, or other representatives who have a need to know for the purpose of using the Software or Charging Platform while performing its obligations under this Agreement and who are bound by written confidentiality obligations no less restrictive than the terms of this Section.

10.2. **Data Security.** Licensor shall be responsible for compliance with applicable laws, including provision of required notices, disclosures and obtaining required consent,

with respect to Licensor's collection, processing, disclosure and use of any data or information that relates to, describes, is reasonably capable of being associated with or could reasonably be linked to a particular consumer or household ("Personal Data") and any other data or information collected by Licensor through the Software Platform and Apps ("Licensor Collected Data"). Licensor shall implement all commercially reasonable security measures — administrative, technical, and physical — consistent with industry standards, to protect Licensor Collected Data from unauthorized use, access, processing, disclosure, alteration or destruction. Such security measures include, without limitation: (i) 128-bit encryption of data at rest within Licensor's servers, movable computing devices, and data communications; and (ii) authentication techniques, such as usernames and passwords, or authorization formats, which limit access to particular users (collectively, the "Security Standard"). Only duly authorized Licensor personnel or contractors are permitted to access Licensor Collected Data, and only to fulfill the obligations of the applicable Order Form and these T&Cs.

**10.3. Exceptions to Confidentiality.** Information shall not be deemed Confidential Information to the extent, but only to the extent, that such information is: (a) already rightfully known to the Receiving Party free of any restriction at the time it is obtained from the Disclosing Party; (b) subsequently rightfully learned from an independent third party free of any restriction imposed by the Disclosing Party and without breach of this Agreement; (c) is or becomes publicly available through no wrongful act of the Receiving Party; or (d) is independently developed by one Party without reference to any Confidential Information of the other.

**10.4. Disclosures Required by Law.** Notwithstanding anything to the contrary above, Confidential Information may be disclosed by the Receiving Party to the extent, but only to the extent, required by law, regulation, government agency or court order, subpoena, or civil investigative demand; provided, however, that the Receiving Party gives the Disclosing Party prompt written notice of the disclosure obligation and cooperates with the Disclosing Party, at the Disclosing Party's expense, in seeking to limit the disclosure to the greatest extent possible consistent with the Receiving Party's legal obligations.

**10.5. Return of Confidential Information.** At the Disclosing Party's direction and in the Disclosing Party's sole discretion at any time, the Receiving Party shall immediately return to the Disclosing Party or destroy any or all Confidential Information. Notwithstanding the foregoing, the Receiving Party will not be required to return or destroy copies of any computer records or electronic files containing the Confidential Information which have been created pursuant to automatic archiving or back-up

procedures on secured servers and which cannot reasonably be deleted. In the event that any Confidential Information is retained pursuant to the preceding sentence, the terms of this Agreement shall remain in effect with respect to such Confidential Information for so long as such Confidential Information is retained.

## 11. **TERM AND TERMINATION**

- 11.1. **Term.** The initial term (“Term”) of this Agreement shall commence on the Effective Date and continue for the Initial Term set forth on the Order Form. Thereafter, this Agreement automatically renews for additional Renewal Periods, as set forth on the Order Form, unless either Party provides notice to the other Party of non-renewal unless thirty (30) days prior to the expiration of the then-current term of the Agreement.
- 11.2. **Events of Default; Remedies.** If either Party causes an Event of Default to occur, the other Party has the right to terminate this Agreement if the Event of Default is not cured within thirty (30) days after receipt of written notice from the other Party describing the Event of Default in reasonable detail. As used in these this Agreement, an “Event of Default” means any failure of either Party to perform under the terms of this Agreement in any material respect. Termination is not an exclusive remedy and the exercise of either Party of any remedy will be without prejudice to any other remedies it may have under this Agreement, applicable law, or otherwise.
- 11.3. **Rights Upon Expiration or Termination.** Notwithstanding any other provision of this Agreement, upon expiration or termination of this Agreement: (a) Licensor shall make available to Licensee the information under the “Reports” tab of the Platform for retrieval by Licensee, for a period of thirty (30) days following expiration or termination; (b) Licensee’s access to the Software Platform and Dashboard will terminate as of the date of expiration or termination, and Licensee shall have no right to access, use, or receive updates or modifications to the Software Platform and Dashboard thereafter; and (c) Licensor’s duty to provide support under Section 5 of this Agreement will cease as of the date of expiration or termination. For the avoidance of doubt, upon expiration or termination and provided Licensee has paid all amounts due under Section 4.2.1, all right, title and interest in and to the Hardware remains with Licensee.
- 11.4. **Survival.** The following provisions shall survive any expiration, cancellation, termination, or rescission of this Agreement: Section 4 (with respect to payment obligations as of the date of termination); Sections 7.2 through 7.4 and Sections 8 through 12.

## 12. GENERAL PROVISIONS.

12.1. **Entire Agreement.** This Agreement, including the applicable Order Form(s) and these T&Cs constitutes the entire agreement between the Parties with respect to the Software and the Hardware, and supersedes all prior and/or contemporaneous agreements, understandings and communications between the Parties with respect thereto. No conditions, usage or trade, course of dealing or performance, understanding or agreement shall be binding unless made in writing and signed by both Parties, expressly referencing this Agreement. Any terms and conditions in any receipt, acknowledgement, purchase order, shipping instruction form, acceptance or any other documentation by Licensee, other than to express type and quantity of product ordered are void and without effect. No modification or amendment to the Order Form or these T&Cs shall be effective unless in writing and executed by a duly authorized representative of each Party. The subject headings of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any provision of this Agreement. Neither Party shall be deemed the drafter of these this Agreement, and any interpretation shall not be so biased. In the event of a conflict between these T&Cs and the Order Forms, the Order Forms take precedence.

12.2. **Notices.** Any notice, approval, request, authorization, direction or other communication under this Agreement will be in English, in writing and will be deemed to have been delivered for all purposes if sent to the addressee listed on the Order Form: (a) on the delivery date if delivered personally; (b) one (1) business day after deposit with a commercial overnight carrier; (c) five (5) business days after the mailing date, if sent by U.S. mail or any other means of rapid mail delivery, or (d) if delivered by electronic mail, on the date the recipient of such notice provides an email reply acknowledging receipt of such notice. Any notice required by this Agreement shall be sent to the address first set forth above or such other address as Licensee or Licensor may specify to the other in writing.

12.3. **Choice of Law; Jurisdiction.** This Agreement is made under and shall be governed by the laws of the state of New York, without regard to any conflict of laws provisions. The Parties submit to the exclusive, personal jurisdiction and venue of the applicable state or federal courts of New York County, NY, to resolve any legal matter arising from or related to this Agreement.

12.4. **Assignment.** Neither Party shall assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party, not unreasonably withheld or delayed; except that either Party may assign or transfer this Agreement to:

(a) the managing entity of a Property, (b) an entity controlling, controlled by or under common control with such Party; or (c) in connection with a spin-off, split-off or other distribution of all or part of the equity interests in a Party or an entity controlling, controlled by or under common control with such Party, its assigns, or a successor of either. In addition, upon prior notice by Licensee to Licensor, Licensee may assign its rights and obligations under this Agreement to any successor owner or ground lessee of title of the Property upon or within which the Charging Platform(s) are installed, including in the event the holder of any lien against the Property upon which the Charging Platform(s) are installed succeed to title to the real property of the Property. Subject to the limitations set forth here, this Agreement will inure to the benefit of and be binding upon the Parties, their successors and assigns.

12.5. **Severability.** If any court of law that has jurisdiction rules that any provision of this Agreement is invalid, then that provision will be removed without affecting the validity of the rest of the Agreement and shall be modified as much as possible to align with the intended interests of the Parties.

12.6. **No Waiver.** A waiver by either Party of any term or condition of this Agreement or any breach thereof, in any one instance, shall be in writing and shall not waive such term or condition or any subsequent breach thereof moving forward.

12.7. **Force Majeure.** Neither Party shall be in default or be liable for any delay, failure in performance resulting directly or indirectly from any cause beyond its reasonable control and which could not have reasonably been anticipated as of the Effective Date.

12.8. **Independent Contractors.** Neither Party shall, for any purpose, be deemed to be an agent of the other Party and the relationship between the Parties shall only be that of independent contractors. Neither Party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of the other Party, whether express or implied, or to bind the other Party in any respect whatsoever.

12.9. **Counterparts.** This Agreement may be executed in counterparts. Signature by facsimile is valid.