

Electric Vehicle Charging Software Terms & Conditions

1. APPLICABILITY

- a. These Electric Vehicle Charging Software Terms & Conditions (“Software Terms”) constitute a binding legal agreement between Livingston Energy Group, LLC d/b/a Lynkwell and all associated entities, representatives, partners, or other third parties providing products or services in conjunction with Lynkwell (hereinafter referred to as “**Lynkwell**”), and the person, company, partnership, or other legal entity (hereinafter referred to as the “**Customer**”) which utilizes Lynkwell’s software products and/or related services (“**Software**”). Lynkwell and Customer can be referred to herein individually as “Party” or together as “Parties.” Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Software Terms.
- b. The accompanying quotation/confirmation of sale/invoice (the "**Proposal**"), these Software Terms, and the Standard Terms (available on our website at <https://lynkwell.com/terms-and-conditions/>) (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.
- c. Notwithstanding anything to the contrary in this Agreement or any Proposal, Lynkwell may, at any time and in its sole discretion, modify, update, replace, or otherwise change these electric vehicle charging software terms and conditions for any reason. Customer agrees that Lynkwell may implement such changes without Customer’s consent, and any updated terms shall be effective upon posting or notification.
- d. These Software Terms shall be considered binding for the parties upon Customer’s acceptance of the Proposal.

2. CUSTOMER RIGHTS & RESPONSIBILITIES:

- a. Customer shall have the right to use the station management platform and obtain data during the term of this Agreement.
- b. Customer shall be responsible for assigning up to one admin account to manage their subscription to the platform. Customer may authorize others to use their subscription to the platform, but assumes responsibility for controlling who has access.
- c. Customer shall be responsible for holding an account with the electric utility provider and for covering the utility expenses for supply of electricity to the EVCS.
- d. Customer shall be responsible for all hardware and/or equipment onsite, including but not limited to the provision of any services by third parties such as electrical, cellular, or internet services.

3. LYNKWELL RIGHTS & RESPONSIBILITIES:

- a. Lynkwell agrees to provide, operate, maintain, administer and support the open platform network of EVCS and the driver application. Lynkwell shall have the right to physically access the site, if doing so is deemed necessary in its sole discretion but shall not be required to do so.
- b. Services provided hereunder are independent of any EVCS installation/project services Customer has received to date.
- c. Lynkwell disclaims any and all responsibility for all hardware and/or equipment onsite, including but not limited to the provision of any services by third parties such as electrical, cellular, or internet services.
- d. Lynkwell's ability to deliver the Software depends on on-site equipment compatibility with our software. The software subscription is available for compatible equipment only.
 - i. Customer may change stations only if they change to other compatible equipment.
 - ii. If Customer makes any deviations from standard equipment/factory condition, they may incur an additional cost for integration of software with that altered piece of equipment.
- e. To the extent permitted by applicable law, Customer shall have the right to hold and use all data collected by it in the provision of the Software. This right shall not expire at the end of the term of this Agreement.
- f. Lynkwell will protect the confidentiality and security of all personally identifiable information in accordance with all applicable laws and regulations.
- g. Lynkwell owns and shall retain all right, title and interest (including without limitation all patent rights, copyrights, trademark rights, trade secret rights and other intellectual property rights), in and to the Software. Customer agrees that only Lynkwell shall have the right to maintain, enhance or otherwise modify the Software. If Customer provides Lynkwell with reports of defects in the Software or proposes or suggests any changes or modifications (collectively "Feedback"), Lynkwell shall have the right to use and benefit from such Feedback including, without limitation, the incorporation of such Feedback into Lynkwell's software products and/or services, including, without limitation, the Software, without any obligation to Customer. If Lynkwell engages in any software development services for Customer ("Software Development"), Lynkwell shall have and retain, without limitation, all right title and interest in any intellectual property, of any kind, that is created through and/or as a result of said Software Development. Except as expressly set forth in this section, Lynkwell reserves all rights and grants Customer no licenses of any kind, whether by implication, estoppel, or otherwise.
- h. Where Lynkwell provides or facilitates cellular connectivity (including SIM cards) in connection with the Products or Services, such connectivity is intended solely to support normal operation, monitoring, and management of the charging equipment.

- Lynkwell reserves the right, in its reasonable discretion, to suspend or limit cellular connectivity associated with any SIM card that exceeds two (2) gigabytes of data usage in a given monthly billing period or is otherwise used in a manner inconsistent with its intended purpose. Any such suspension or limitation shall not constitute a breach of this Agreement by Lynkwell, and Customer remains responsible for all fees and charges incurred prior to suspension.
- i. Lynkwell grants Customer a limited, nonexclusive, nontransferable license to use the software, station management platform, and the data provided by Lynkwell to them on the station management platform. This license shall expire upon the termination of this Agreement.
 - j. Lynkwell grants Customer a limited, nonexclusive, nontransferable license to use data contained in reports generated through the station management platform. This license shall not expire upon the termination of this Agreement.
4. RESTRICTIONS: Customer shall not
- a. sell, resell, license, rent, lease, or otherwise transfer data.
 - i. Customer shall not transfer the data to unauthorized third parties without obtaining prior written permission from Lynkwell.
 - b. interfere with or disrupt the software or station management platform.
 - c. attempt to gain unauthorized access to the software or station management platform.
 - d. reverse engineer, decompile or otherwise attempt to extract the source code of the software or the network, except to the extent expressly permitted or required by applicable law.
 - e. create derivative works, copy, frame or mirror based on the Software, or any of Lynkwell's various trademarks, service marks, trade names, logos, domain names, and other distinctive brand features and designations used in connection with the Software ("Marks").
 - f. remove, conceal or cover the Marks or any other markings, labels, legends, trademarks, or trade names used by Lynkwell.
 - g. upload, transmit or introduce any malicious code to Lynkwell or the software or station management platform.
 - h. access the software or station management platform for any competitive purpose, or for any improper purpose whatsoever.
 - i. use the software to upload, post, display, transmit or otherwise make available
 - i. any inappropriate, defamatory, obscene, or unlawful content.
 - ii. any content that infringes any patent, trademark, copyright, trade secret or other proprietary right of any party.
 - iii. any messages, communication or other content that promote pyramid schemes, chain letters, constitute disruptive commercial messages or advertisements, or is prohibited by applicable law.
5. LIMITATION OF LIABILITY

- a. In no event shall Lynkwell be liable to Customer or any third party claiming through Customer for any losses caused by computer virus, ransomware, malware, failure to update operating system or other software, communication line failure, or delays in transmission. In no event shall Lynkwell be responsible for any unauthorized access, any lost, deleted, or inaccessible data, (whether or not stored on or associated with the equipment), including, without limitation, any loss or injury to earnings, profits or revenues or goodwill or costs of cover, in each case, arising under or in connection with this Agreement or the equipment, or for any special, indirect, incidental, consequential, or punitive damages even if such damages were foreseeable or Lynkwell is advised of the possibility of such damages. With respect to any discreet component which is not manufactured by Lynkwell, the warranty of the manufacturer thereof shall apply and be exclusive. The maximum liability of Lynkwell for claims arising from or in connection with this agreement or the equipment, of any kind and based on any theory of liability shall be limited, in the aggregate, to the amounts paid to Lynkwell for the twelve-month period preceding the claim, except for any claims for personal injury or death (for which no limit applies). Lynkwell disclaims any warranty, liability or duty to provide notice to Customer and/or Customer's employees of Customer's duty to comply with any biometric privacy laws or similar biometric storage and/or reporting laws, rules, regulations or statutes. Customer is solely responsible for compliance with any and all biometric privacy laws and any laws, rules, regulations or statutes governing use of equipment, including but not limited to any biometric storage and/or reporting laws, rules, regulations or statutes.
6. DATA PRIVACY
 - a. This Agreement incorporates by reference our Privacy Policy, which is available on our website.
 7. ADDITIONAL OPTIONS
 - a. Customer may select to conduct promotions and advertisements through the software, if the equipment allows, and may choose to charge for use of EVCS and collect revenue. For any such additional features, Customer and Lynkwell will negotiate an addendum to this Agreement.
 8. SUBSCRIPTION FEES AND LATE PAYMENTS
 - a. Customer shall be required to have two viable payment methods on record at all times.
 - i. Acceptable payment methods include, but are not limited to:
 1. Bank Account
 2. Credit Card
 3. Customer Network Account (viable only after Year 1 of the subscription)
 - b. Unless otherwise specified in the Proposal or in an addendum to this Agreement, the subscription fee will be charged automatically via the primary payment method on a yearly basis, starting from the first day of the term of this Agreement.

- c. There shall be one subscription for each port and the subscription fee shall be charged per port. The subscription/subscription fee shall not attach to the project/site as a whole.
- d. If the project involves staggered and/or multiple port activations, aggregate billing may be available.
- e. If Lynkwell is unable to collect the subscription fee through either of the two selected payment methods, there will be a 30-day grace period followed by levy of a late payment fee. If, after 30 days we are still unable to collect the subscription fee, Lynkwell in its sole discretion can choose to terminate the agreement, suspend the service until payment is completed, or collect overdue payment from charging revenue.

9. TERMINATION

- a. By Lynkwell:
 - i. Lynkwell retains the right to terminate this Agreement at any time, with or without cause.
 - ii. If Customer is in breach of this Agreement, Lynkwell may terminate and not refund any portion of the subscription fee.
- b. By Customer:
 - i. Customer retains the right to terminate this Agreement if Lynkwell is in breach of this Agreement or has become insolvent.
 - ii. Customer may also terminate without cause so long as they give written notice within 90 days of, but no less than 30 days before, the end of the current contract term.
 - iii. If Lynkwell breaches this Agreement, or if Customer is terminated without cause, Customer may receive back a percentage of their subscription fee according to when termination occurs, but only for services not yet rendered.

10. SURVIVABILITY

- a. The provisions dealing with the intellectual property rights of Lynkwell, limitations of liability and disclaimers, restrictions of warranty, governing law and those other provisions which by their nature or terms are intended to survive the termination of this Agreement will remain in full force and effect regardless of termination.

11. INDEMNIFICATION

- a. Customer hereby agrees to indemnify, defend and hold Lynkwell, its officers, directors, agents, affiliates, distribution partners, licensors and suppliers harmless from and against any and all claims, actions, proceedings, costs, liabilities, losses and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Claims") suffered or incurred by such indemnified parties resulting from or arising out of Customer's actual or alleged use (directly, or through a grant of Rights by Customer) of the Software. Customer shall cooperate as fully as is reasonably required in the defense of any claim. Lynkwell reserves the right, at its own expense,

to assume the exclusive defense and control of any matter subject to indemnification by Customer.

12. MODIFICATION

- a. Lynkwell reserves the right to modify this Agreement from time to time. Lynkwell will provide notice of each such modification to Customer. Customer's continued use of the Software following such notice will constitute an acceptance of the modified Agreement.

13. FAILURE TO ENFORCE

- a. Failure of a Party to enforce any provision of this Agreement shall not be construed to be a waiver of the right of such Party to thereafter enforce that provision or any other provision or right.

14. FORCE MAJEURE

- a. Except with respect to payment obligations, neither Lynkwell nor Customer shall be liable for failure to perform any of its obligations hereunder due to causes beyond such party's reasonable control and occurring without its fault or negligence, including but not limited to fire, flood, earthquake or other natural disaster; war, embargo; riot; strike; labor action; any lawful order, decree, or other directive of any government authority that prohibits a Party from performing its obligations under this Agreement; material shortages; shortage of transport; and failures of suppliers to deliver material or components in accordance with the terms of their contracts.

15. GOVERNING LAW

- a. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the State of New York.

16. NOTICES

- a. All notices required or permitted under this Agreement shall be sent, if by Lynkwell, via electronic mail to the address indicated by Customer, or if by Customer, via electronic mail to info@solution.energy.

17. DAMAGES

- a. Customer acknowledges that damages for improper use of the Software may be irreparable and therefore Lynkwell is entitled to seek equitable relief, including but not limited to injunction and all other remedies.

18. SEVERABILITY

- a. Except as otherwise specifically provided herein, if any term or condition of this Agreement or the application thereof to either Party will to any extent be determined jointly by the Parties or by any judicial, governmental or similar authority to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to this Agreement, the Parties or circumstances other than those as to which it is determined to be invalid or unenforceable, will not be affected thereby.

19. ASSIGNMENT

- a. Customer may not assign any of its rights or obligations hereunder without the prior written consent of Lynkwell which shall not be unreasonably withheld. In the event of any breach of this section, Lynkwell shall be entitled in its sole discretion to terminate this Agreement, upon giving written notice to Customer. Subject to this section, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. Lynkwell may assign its rights and obligations under this Agreement.

20. ENTIRE AGREEMENT

- a. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter discussed herein, and supersedes all previous and contemporaneous agreements, negotiations, commitments, understandings, representations and writings.

Administrative Fee*:

- Administrative fees applied as a percentage of transactions may be applicable depending on configuration settings, jurisdiction, and method of payment used. Market variable payment processing charges, administrative costs, and service fees may be included as an administrative fee.

Network Fee*:

- Network fees applied as a percentage of transactions may be applicable depending on configuration settings, jurisdiction, and method of payment used. Market variable payment processing charges, administrative costs, and service fees may be included as a network fee.