

**SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT**

PLEASE READ THIS SOFTWARE SUBSCRIPTION AGREEMENT (THIS “**AGREEMENT**”) CAREFULLY BEFORE ACCESSING OR USING THE SUBSCRIPTION SERVICES (AS DEFINED BELOW) AS IT GOVERNS USE OF THE SUBSCRIPTION SERVICES BY THE SUBSCRIBING PERSON OR ENTITY AND ANY PERSON OR ENTITY ON WHOSE BEHALF THE SUBSCRIBING PERSON OR ENTITY IS ACCESSING AND USING THE SERVICES (“**CUSTOMER**” OR “**YOU**”) AS OF THE DATE OF ANY APPLICABLE ORDER FORM (AS DEFINED BELOW) BETWEEN YOU AND NAD GRID CORP DBA AMPUP (“**AMPUP**”), AS FURTHER EXPLAINED BELOW (THE “**EFFECTIVE DATE**”), UNLESS YOU AND AMPUP HAVE EXECUTED A SEPARATE AGREEMENT GOVERNING SUCH USE.

AmpUp is willing to provide the Subscription Services to you only upon the condition that you accept all the terms contained in this Agreement. By clicking on the checkbox on the checkout page of AmpUp’s self-ordering and self-payment checkout feature available at: [payments.ampup.io](https://payments.ampup.io), or by accessing or using the Subscription Services any other way, you indicate that you understand this Agreement and accept all of its terms, and all terms and conditions of AmpUp’s Website [Terms of Service](#) (the “**Terms**”) and AmpUp’s [Privacy Policy](#) which are incorporated herein by reference. If you accept the terms of this Agreement on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to the terms of this Agreement, and, in such event, “you” and “your” will refer to that company or other legal entity. If you do not accept all the terms of this Agreement, then you must not click the checkbox and you should not use the Subscription Service.

By using AmpUp’s self-ordering and self-payment checkout feature, you may customize the Subscription Services to your needs, including by choosing the Subscription Tier, Number of Charge Station Ports, Activation Date, and Subscription Term that best corresponds to such needs. Once you check out and complete payment, you are considered to have entered into an Order Form with AmpUp. This Agreement includes and incorporates by reference all Order Forms between you and AmpUp. AmpUp and Customer are each referred to herein as a “**Party**” and collectively as the “**Parties**”.

**1. DEFINITIONS.**

- (a) “**Aggregate Data**” means any data that is derived or aggregated in deidentified form from (i) any Customer Materials; or (ii) Customer’s and/or its Authorized Users’ Use of the Subscription Services, including, without limitation, any usage data or trends with respect to the Subscription Services.
- (b) “**Authorized User**” means an employee or contractor whom Customer has authorized to Use the Subscription Services.
- (c) “**AmpUp IP**” means the Subscription Services, the underlying software provided in conjunction with the Subscription Services, algorithms, interfaces, technology, databases, tools, know-how, processes and methods used to provide or deliver the Subscription Services or any Professional Services, Documentation and Aggregate Data, all improvements, modifications or enhancements to, or derivative works of, the foregoing (regardless of inventorship or authorship), and all Intellectual Property Rights in and to any of the foregoing.
- (d) “**Customer Materials**” means all information, data, content and other materials, in any form or medium, that is submitted, posted, collected, transmitted or otherwise provided by or on behalf of Customer through the Subscription Services or to AmpUp in connection with Customer’s Use of the Subscription Services, but excluding, for clarity, Aggregate Data and any other information, data, data models, content or materials owned or controlled by AmpUp and made available through or in connection with the Subscription Services.
- (e) “**Documentation**” means the operator and user manuals, training materials, specifications, minimum system configuration requirements, compatible device and hardware list and other similar materials in hard copy or electronic form, if and as provided by AmpUp to Customer (including any revised versions thereof), relating to the Subscription Services, which may be updated from time to time upon notice to Customer.
- (f) “**Intellectual Property Rights**” means patent rights (including, without limitation, patent applications and disclosures), inventions, copyrights, trade secrets, know-how, data and database rights, mask work rights, and any other intellectual property rights recognized in any country or jurisdiction in the world.

- (g) **“Order Form”** means the confirmation issued by AmpUp following the placement of an order by Customer via AmpUp’s self-ordering and self-payment checkout feature.
- (h) **“Person”** means any individual, corporation, partnership, trust, limited liability company, association, governmental authority or other entity.
- (i) **“Professional Services”** means the implementation, support, and/or other professional services, if any, to be provided by AmpUp to Customer as set forth in the relevant Order Form.
- (j) **“Subscription Services”** means the electric vehicle (“EV”) charging software and solutions developed and made available by AmpUp, as more particularly described or identified in the applicable Order Form.
- (k) **“Use”** means to use and/or access the Subscription Services in accordance with this Agreement and the Documentation.

## 2. SUBSCRIPTION SERVICES; ACCESS AND USE.

- (a) Subscription Services. Subject to the terms and conditions of this Agreement, AmpUp hereby grants Customer a limited, non-exclusive, non-transferable (except in compliance with Section 13(f)) right to Use the Subscription Services during the Term, solely for Customer’s internal business or personal purposes.
- (b) Use Restrictions. Customer will not at any time and will not permit any Person (including, without limitation, Authorized Users) to, directly or indirectly: (i) use the Subscription Services in any manner beyond the scope of rights expressly granted in this Agreement; (ii) modify or create derivative works of the Subscription Services or Documentation, in whole or in part; (iii) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain improper access to any software component of the Subscription Services, in whole or in part; (iv) frame, mirror, sell, resell, rent or lease use of the Subscription Services to any other Person, or otherwise allow any Person to use the Subscription Services for any purpose other than for the benefit of Customer in accordance with this Agreement; (v) use the Subscription Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any Person, or that violates any applicable law; (vi) interfere with, or disrupt the integrity or performance of, the Subscription Services, or any data or content contained therein or transmitted thereby; (vii) access or search the Subscription Services (or download any data or content contained therein or transmitted thereby) through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers or any other similar data mining tools) other than software or Subscription Services features provided by AmpUp for use expressly for such purposes; or (viii) use the Subscription Services, Documentation or any other AmpUp Confidential Information for benchmarking or competitive analysis with respect to competitive or related products or services, or to develop, commercialize, license or sell any product, service or technology that could, directly or indirectly, compete with the Subscription Services.
- (c) Authorized Users. Customer will not allow any Person other than Authorized Users to Use the Subscription Services. Customer may permit Authorized Users to Use the Subscription Services, *provided* that Customer ensures each Authorized User complies with all applicable terms and conditions of this Agreement and Customer is responsible for acts or omissions by Authorized Users in connection with their Use of the Subscription Services. Customer will, and will require all Authorized Users to, use all

reasonable means to secure user names and passwords, hardware and software used to access the Subscription Services in accordance with customary security protocols, and will promptly notify AmpUp if Customer knows or reasonably suspects that any user name and/or password has been compromised.

- (d) Third-Party Services. Certain features and functionalities within the Subscription Services may allow Customer and its Authorized Users to interface or interact with, access and/or use compatible third-party services, products, technology and content (collectively, "**Third-Party Services**") through the Subscription Services. AmpUp does not provide any aspect of the Third-Party Services and is not responsible for any compatibility issues, errors or bugs in the Subscription Services or Third-Party Services caused in whole or in part by the Third-Party Services or any update or upgrade thereto. Customer is solely responsible for maintaining the Third-Party Services and obtaining any associated licenses and consents necessary for Customer to use the Third-Party Services in connection with the Subscription Services.
- (e) Reservation of Rights. Subject to the limited rights expressly granted hereunder, AmpUp reserves and, as between the Parties will solely own, the AmpUp IP and all rights, title and interest in and to the AmpUp IP. No rights are granted to Customer hereunder (whether by implication, estoppel, exhaustion or otherwise) other than as expressly set forth herein.
- (f) Feedback. From time to time Customer or its employees, contractors, or representatives may provide AmpUp with suggestions, comments, feedback or the like with regard to the Subscription Services (collectively, "**Feedback**"). Customer hereby grants AmpUp a perpetual, irrevocable, royalty-free and fully-paid up license to use and exploit all Feedback in connection with AmpUp's business purposes, including, without limitation, the testing, development, maintenance and improvement of the Subscription Services.

### 3. FEES AND PAYMENT.

- (a) Fees. Customer will pay AmpUp the non-refundable fees set forth in the relevant Order Form ("**Fees**") in accordance with the terms therein and without offset or deduction. AmpUp reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Term or then-current Renewal Term, upon thirty (30) days' prior notice to Customer (which may be sent by email).
- (b) Payments. Customer agrees to pay all Fees in accordance with the fees, charges and billing terms in effect at the time a fee or charge is due and payable. The initial Fees payable by Customer will be due and payable by Customer at checkout upon initially ordering the Subscription Services, via the payment method selected by Customer, and on an annual basis thereafter, in advance of each Renewal Term. Customer must provide Company with a valid credit card (Visa, MasterCard, or any other issuer accepted by us) ("**Payment Provider**"), purchase order information, or other valid payment method as a condition to signing up for the Subscription Services. Customer may also choose to pay via ACH, as set forth by AmpUp at checkout. Customer understands that unless it cancels its subscription a minimum of thirty (30) days prior to expiration of the Initial Term, AmpUp and/or its payment processor will charge Customer's selected payment method for all applicable Fees, including any applicable taxes, on the applicable payment date. Customer's Payment Provider agreement governs Customer's use of the designated credit card, and Customer must refer to that agreement and not this Agreement to determine its related rights and liabilities. We currently use Stripe Inc. ("**Stripe**") as provider for payment services (e.g., credit card transaction processing, merchant settlement, and related services). By purchasing any of our Subscription Services, Customer agrees to be bound by Stripe's U.S. Terms of Service available at <https://stripe.com/us/terms> and Privacy Policy available at <https://stripe.com/us/privacy> (collectively,

the “**Stripe Terms**”). Customer understands that the Stripe Terms may be updated from time to time in Stripe’s sole discretion, and that Customer is solely responsible for its compliance with the current version of the Stripe Terms. Customer hereby consents to provide and authorize AmpUp, Stripe, and any other payment services provider we may engage to share any information and payment instructions Customer provides to the extent required to complete the payment transactions in accordance with this Agreement, including personal, financial, credit card payment, and transaction information. By providing AmpUp with its credit card number and associated payment information, Customer agrees that AmpUp is authorized to invoice Customer for all fees and charges due and payable to AmpUp hereunder and that no additional notice or consent is required. Customer agrees to immediately notify AmpUp of any change in its billing address or the credit card account used for payment hereunder. Payments made to AmpUp under this Agreement are non-refundable. If AmpUp is unable to charge Customer’s selected payment method for any reason, AmpUp may suspend the Subscription Services until all payments are made in full. If AmpUp cannot charge Customer’s selected payment method for any reason (such as expiration or insufficient funds), Customer remains responsible for any uncollected amounts, and AmpUp will attempt to charge the payment method again as Customer may update its payment method information. In accordance with local law, AmpUp may update information regarding Customer’s selected payment method if provided such information by Customer’s financial institution.

- (c) **Fees Payable by Drivers and Hires; AmpUp Service Fee.** AmpUp will disclose to Drivers and Hires (as defined in the Terms) the fees payable by them for the charging services offered by Customer, as well as the service fee charged by AmpUp. Customer hereby acknowledges and agrees that AmpUp may decide, in its sole discretion, to charge the service fee to the Driver / Hire (as applicable), or to Customer. The service fee will be communicated directly by AmpUp to Customer, or made available on AmpUp’s website or mobile app.
- (d) **Taxes.** Customer is responsible for all sales, use, ad valorem and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, multinational or local governmental regulatory authority on any amount payable by Customer to AmpUp hereunder, other than any taxes imposed on AmpUp’s income. Such taxes, duty and charges will be charged to Customer’s selected payment method together with the Fees, as set forth in Section 3(a) above.
- (e) **Carbon Credits.** Customer acknowledges that the Subscription Services have the potential to generate credits (including carbon credits and renewable-energy credits), offsets, benefits, reductions or other tradable environmental air quality benefits, beneficial allowances or environmental attributes (collectively “**Carbon Credits**”). Customer must notify AmpUp at the time they order the Subscription Services if they wish to redeem Carbon Credits on their own behalf or on behalf of their end customers. If such notice is not provided as set forth herein, Customer hereby waives all rights to the receipt or transfer of any Carbon Credit in connection with Customer’s use of the Subscription Services and agrees that as between AmpUp and Customer, the right to transfer, monetize or otherwise benefit from the Carbon Credits will be retained exclusively by AmpUp. Customer will not offer to any of its customers the possibility to redeem Carbon Credits on their behalf and to the extent Customer is asked to do so by a customer, Customer will promptly redirect such request to AmpUp.

#### 4. CONFIDENTIAL INFORMATION.

- (a) As used herein, “**Confidential Information**” means any information that one Party (the “**Disclosing Party**”) provides to the other Party (the “**Receiving Party**”) in connection with this Agreement, whether orally or in writing, that is designated as confidential or that reasonably should be considered to be confidential given the nature of the information and/or the circumstances of

disclosure. However, Confidential Information will not include any information or materials that: (i) were, at the date of disclosure, or have subsequently become, generally known or available to the public through no act or failure to act by the Receiving Party; (ii) were rightfully known by the Receiving Party prior to receiving such information or materials from the Disclosing Party; (iii) are rightfully acquired by the Receiving Party from a third party who has the right to disclose such information or materials without breach of any confidentiality or non-use obligation to the Disclosing Party; or (iv) are independently developed by or for the Receiving Party without use of or access to any Confidential Information of the Disclosing Party.

- (b) The Receiving Party will maintain the Disclosing Party's Confidential Information in strict confidence, and will not use the Confidential Information of the Disclosing Party except as necessary to perform its obligations or exercise its rights under this Agreement; *provided* that AmpUp may use and modify Confidential Information of Customer in deidentified form for purposes of developing and deriving Aggregate Data. The Receiving Party will not disclose or cause to be disclosed any Confidential Information of the Disclosing Party, except (i) to those employees, representatives, or contractors of the Receiving Party who have a bona fide need to know such Confidential Information to perform under this Agreement and who are bound by written agreements with use and nondisclosure restrictions at least as protective as those set forth in this Agreement, or (ii) as such disclosure may be required by the order or requirement of a court, administrative agency or other governmental body, subject to the Receiving Party providing to the Disclosing Party reasonable written notice to allow the Disclosing Party to seek a protective order or otherwise contest the disclosure.
- (c) Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five (5) years from the date first disclosed to the Receiving Party; *provided*, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.
- (d) The terms and conditions of this Agreement will constitute Confidential Information of each Party but may be disclosed on a confidential basis to a Party's advisors, attorneys, actual or bona fide potential acquirers, investors or other sources of funding (and their respective advisors and attorneys) for due diligence purposes.

## 5. PROFESSIONAL SERVICES

- (a) Implementation. AmpUp will use commercially reasonable efforts to provide Customer with the implementation services described in an applicable Order Form, if any.
- (b) Support. AmpUp will use commercially reasonable efforts to provide reasonable technical support to Customer by electronic mail, SMS or web chat and/or phone in connection with Customer's Use of the Subscription Services, on weekdays, during the hours of 9:00 a.m. to 7:00 p.m. Eastern Time, with the exception of U.S. federal holidays ("**SupportHours**"), subject to the following conditions: (i) prior to initiating any support request, Customer (and its own personnel responsible for information technology support) will have first attempted to resolve the issue generating the need for such support; and (ii) Customer will reasonably cooperate with AmpUp support staff as needed to resolve the issue. Customer may initiate a helpdesk ticket during Support Hours by calling or emailing AmpUp at [833-692-6787](tel:833-692-6787) or [help@ampup.io](mailto:help@ampup.io).



## 6. CUSTOMER MATERIALS AND DATA.

- (a) AmpUp acknowledges that, as between Customer and AmpUp and except as set forth in Section 6(b), Customer owns and retains all right, title and interest in and to all Customer Materials.
- (b) Customer hereby grants AmpUp a non-exclusive, worldwide, royalty-free right and license to use, host, reproduce, display, perform, modify the Customer Materials solely for the purpose of hosting, operating, improving and providing the Subscription Services, Professional Services and AmpUp's other related products, services and technologies during the Term.
- (c) Customer represents and warrants that (i) it has obtained and will obtain and continue to have, during the Term, all necessary rights, authority and licenses for the access to and use of the Customer Materials (including any personal data provided or otherwise collected pursuant to Customer's privacy policy) as contemplated by this Agreement and (ii) AmpUp's use of the Customer Materials in accordance with this Agreement will not violate any applicable laws or regulations or cause a breach of any agreement or obligations between Customer and any third party.

**7. REPRESENTATIONS AND WARRANTIES.** Customer hereby represents and warrants to AmpUp that: (i) it is duly organized, validly existing and in good standing under its jurisdiction of organization and has the right to enter into this Agreement; (ii) the acceptance and performance of this Agreement and the consummation of the transactions contemplated hereby are within the corporate powers of Customer and have been duly authorized by all necessary corporate action on the part of Customer, and constitute a valid and binding agreement of Customer; and (iii) Customer and its Authorized Users will use the Subscription Services only in compliance with this Agreement and all applicable laws and regulations.

## 8. INDEMNIFICATION.

- (a) AmpUp Indemnification If AmpUp reasonably believes the Subscription Services (or any component thereof) could infringe any third party's Intellectual Property Rights, AmpUp may, at its sole option and expense use commercially reasonable efforts to: (i) modify or replace the Subscription Services, or any component or part thereof, to make it non-infringing; or (ii) procure the right for Customer to continue Use. If AmpUp determines that neither alternative is commercially practicable, AmpUp may terminate this Agreement, in its entirety or with respect to the affected component, by providing written notice to Customer. In the event of any such termination, AmpUp will refund to Customer a pro-rata portion of the Fees that have been paid for the unexpired portion. The rights and remedies set forth in this Section 8(a) will constitute Customer's sole and exclusive remedy for any infringement or misappropriation of Intellectual Property Rights in connection with the Subscription Services.
- (b) Customer Indemnification. Customer will defend AmpUp against any claim, suit or proceeding brought by a third party ("**Claims**") arising from (i) any Customer Materials, including, without limitation, (A) any Claim that the Customer Materials infringe, misappropriate or otherwise violate any third party's Intellectual Property Rights or privacy or other rights; or (B) any Claim that the use, provision, transmission, display or storage of Customer Materials violates any applicable law, rule or regulation; (ii) any of Customer's products or services; and (iii) Use of the Subscription Services by Customer or its Authorized Users in a manner that is not in accordance with this Agreement or the Documentation, including, without limitation, any

breach of the license restrictions in Section 2(b), and in each case, will indemnify and hold harmless AmpUp against any damages and costs awarded against AmpUp or agreed in settlement by Customer (including reasonable attorneys' fees) resulting from such Claim.

**9. PROFESSIONAL SERVICES WARRANTY; DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SUBSCRIPTION SERVICES, PROFESSIONAL SERVICES AND OTHER AMPUP IP ARE PROVIDED ON AN "AS IS" BASIS, AND AMPUP MAKES NO WARRANTIES OR REPRESENTATIONS TO CUSTOMER, ITS AUTHORIZED USERS OR TO ANY OTHER PARTY REGARDING THE AMPUP IP, THE SUBSCRIPTION SERVICES, PROFESSIONAL SERVICES OR ANY OTHER SERVICES OR MATERIALS PROVIDED HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AMPUP HEREBY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, AMPUP HEREBY DISCLAIMS ANY WARRANTY THAT USE OF THE SUBSCRIPTION SERVICES OR PROFESSIONAL SERVICES WILL BE ERROR-FREE, BUG-FREE OR UNINTERRUPTED.

**10. LIMITATIONS OF LIABILITY.**

- (a) Exclusion of Damages. AMPUP WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF INCOME, DATA, PROFITS, REVENUE OR BUSINESS INTERRUPTION, OR THE COST OF COVER OR SUBSTITUTE SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE AMPUP IP OR THE PROVISION OF THE SUBSCRIPTION SERVICES AND PROFESSIONAL SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
- (b) Total Liability. IN NO EVENT WILL AMPUP'S TOTAL LIABILITY TO CUSTOMER OR ITS AUTHORIZED USERS IN CONNECTION WITH THIS AGREEMENT, THE AMPUP IP OR THE PROVISION OF THE SUBSCRIPTION SERVICES OR PROFESSIONAL SERVICES EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO AMPUP IN THE SIX (6) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ON WHICH THE CLAIM OR LIABILITY IS BASED, AND WHETHER OR NOT AMPUP WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
- (c) Basis of the Bargain. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 10 ARE AN ESSENTIAL PART OF THE BASIS OF THE BARGAIN BETWEEN AMPUP AND CUSTOMER, AND WILL APPLY EVEN IF THE REMEDIES AVAILABLE HEREUNDER ARE FOUND TO FAIL THEIR ESSENTIAL PURPOSE.

**11. TERM AND TERMINATION.**

- (a) Term. The initial term of this Agreement begins on the Effective Date and expires at the end of the Initial Term specified in the relevant Order Form (the "**Initial Term**"). Following the Initial Term, this Agreement will automatically renew for additional periods of the same duration as the Initial Term (each, a "**Renewal Term**," and together with the Initial Term, the "**Term**"), unless

either Party provides the other with at least thirty (30) days' written notice of its intent not to renew this Agreement prior to the end of the then-current Term.

- (b) Termination. Either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach.
- (c) Survival. This Section 11(c) and Sections 2(f), 3(d), 4, 8, 9, 10, 11(d), and 13 survive any termination or expiration of this Agreement.
- (d) Effect of Termination. Upon expiration or termination of this Agreement: (i) the rights granted pursuant to Section 2(a) will terminate; and (ii) Customer will return or destroy, at AmpUp's sole option, all AmpUp Confidential Information in its possession or control, including permanent removal of such AmpUp Confidential Information (consistent with customary industry practice for data destruction) from any storage devices or other hosting environments that are in Customer's possession or under Customer's control, and at AmpUp's request, certify in writing to AmpUp that the AmpUp Confidential Information has been returned, destroyed or, in the case of electronic communications, deleted. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due or otherwise accrued through the effective date of expiration or termination, or entitle Customer to any refund.

**12. TRADEMARKS.** Customer hereby grants AmpUp a limited, non-exclusive, royalty-free license to use and display Customer's name, designated trademarks and associated logos (the "**Customer Marks**") during the Term in connection with (i) the hosting, operation and maintenance of the Subscription Services; and (ii) AmpUp's marketing and promotional efforts for its products and services, including by publicly naming Customer as a customer of AmpUp and in case studies. All goodwill and improved reputation generated by AmpUp's use of the Customer Marks inures to the exclusive benefit of Customer. AmpUp will use the Customer Marks in the form stipulated by Customer and will conform to and observe such standards as Customer prescribes from time to time in connection with the license granted hereunder.

### 13. MISCELLANEOUS.

- (a) Entire Agreement. This Agreement, including all applicable Order Forms incorporated herein, is the complete and exclusive agreement between the Parties with respect to its subject matter and supersedes any and all prior or contemporaneous agreements, communications and understandings, both written and oral, with respect to its subject matter. This Agreement may be amended or modified only by a written document executed by duly authorized representatives of the Parties.{" "}
- (b) Notices. Any notices or other communications provided by AmpUp under this Agreement will be given: (i) via email; or (ii) by posting to the Subscription Services. For notices made by email, the date of receipt will be deemed the date on which such notice is transmitted.
- (c) Waiver. Either Party's failure to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. No waiver of any provision of this Agreement will be effective unless it is in writing and signed by the Party granting the waiver.



- (d) Severability. If any provision of this Agreement is held invalid, illegal or unenforceable, that provision will be enforced to the maximum extent permitted by law, given the fundamental intentions of the Parties, and the remaining provisions of this Agreement will remain in full force and effect.
- (e) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California without giving effect to any principles of conflict of laws that would lead to the application of the laws of another jurisdiction. The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in Northern District of California and the Parties irrevocably consent to the personal jurisdiction and venue therein.
- (f) Assignment. Neither Party may assign or transfer this Agreement, by operation of law or otherwise, without the other Party's prior written consent. Any attempt to assign or transfer this Agreement without such consent will be void. Notwithstanding the foregoing, either Party may assign or transfer this Agreement to a third party that succeeds to all or substantially all of the assigning Party's business and assets relating to the subject matter of this Agreement, whether by sale, merger, operation of law or otherwise. Subject to the foregoing, this Agreement is binding upon and will inure to the benefit of each of the Parties and their respective successors and permitted assigns.
- (g) Equitable Relief. Each Party agrees that a breach or threatened breach by such Party of any of its obligations under Section 4 or, in the case of Customer, Section 2(b), would cause the other Party irreparable harm and significant damages for which there may be no adequate remedy under law and that, in the event of such breach or threatened breach, the other Party will have the right to seek immediate equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.
- (h) Force Majeure. Neither Party will be responsible for any failure or delay in the performance of its obligations under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, which may include, without limitation, labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, denial of service or other malicious attacks, telecommunications failure or degradation, pandemics, epidemics, public health emergencies, governmental orders and acts (including government-imposed travel restrictions and quarantines), material changes in law, war, terrorism, riot, or acts of God.
- (i) Subcontracting. AmpUp may use subcontractors, and other third-party providers ("**Subcontractors**") in connection with the performance of its own obligations hereunder as it deems appropriate; *provided* that AmpUp remains responsible for the performance of each such Subcontractor. Notwithstanding anything to the contrary in this Agreement, with respect to any third-party vendors including any hosting (e.g. AWS) or payment vendors (e.g. PayPal), AmpUp will use commercially reasonable efforts to guard against any damages or issues arising in connection with such vendors, but will not be liable for the acts or omissions of such third-party vendors except to the extent that it has been finally adjudicated that such damages or issues are caused directly from the gross negligence or willful misconduct of AmpUp.

- (j) Export Regulation. Customer affirms that it is not named on, owned by, or acting on behalf of any U.S. government denied-party list, and it agrees to comply fully with all relevant export control and sanctions laws and regulations of the United States (“**Export Laws**”) to ensure that neither the Subscription Services, software, any Customer Materials, nor any technical data related thereto is: (i) used, exported or re-exported directly or indirectly in violation of Export Laws; or (ii) used for any purposes prohibited by the Export Laws, including, but not limited to, nuclear, chemical, or biological weapons proliferation, missile systems or technology, or restricted unmanned aerial vehicle applications. Customer will complete all undertakings required by Export Laws, including obtaining any necessary export license or other governmental approval.{" "}
- (k) U.S. Government End Users. The Subscription Services, software and Documentation were developed solely at private expense and are “commercial products”, “commercial items”, or “commercial computer software” as defined in the Federal Acquisition Regulation 2.101 and other relevant government procurement regulations including agency supplements. Any use, duplication, or disclosure of the software or its documentation by or on behalf of the U.S. government is subject to restrictions as set forth in this Agreement as consistent with federal law and regulations. If these terms fail to meet the U.S. Government’s needs or are inconsistent in any respect with federal law, you will immediately discontinue your use of the software or its documentation.
- (l) Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing in this Agreement will be construed to establish any partnership, joint venture or agency relationship between the Parties. Neither Party will have the power or authority to bind the other or incur any obligations on the other’s behalf without the other Party’s prior written consent.
- (m) No Third-Party Beneficiaries. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the Parties and their respective successors and assigns.