

These terms and conditions (“FractalEV Terms”) govern the use of the FractalEV cloud services. By using any of the FractalEV services, you indicate your acceptance of this agreement. If an Order Form has been executed with FractalEV, these FractalEV Terms become an integral part of said Order Form. Any capitalized terms not defined herein shall have the meaning set forth in the Order Form.

## **1. Definitions**

- a. “Application” means the FractalEV proprietary software accessed through [fractalev.com](http://fractalev.com)
- b. “Charging Station” means the electric vehicle supply equipment that is listed on the Order Form and connected to the Application
- c. “Confidential and Proprietary Information”
- d. “Documentation” means any informational materials, tutorials and guidelines, user and installation manuals, and/or reference or training instructions provided by FractalEV
- e. “Fee” means the fess listed in the Order Form
- f. “Offering” means, collectively, the Charging Station and the Application
- g. “Personal Information” means personally identifiable information such as a name, address, email address, credit card information, date of birth and gender
- h. “Order Form” or “Order” means the order form for the Offering executed by the parties to which this Subscription Agreement is attached.
- i. “Owner” means the person who owns the Charging Station which may be updated by providing written notice to FractalEV in accordance with Section 10
- j. “Purchase Order” means the written order for the offering by an Owner, accept by FractalEV, to purchase one or more Charging Stations
- k. “User” means anyone who accesses the Application
- l. “User Data” means any information submitted by user to FractalEV for the purpose of performing the Services
- m. “Website” means the FractalEV website located at [www.FractalEV.com](http://www.FractalEV.com)

## **2. Acceptance of the FractalEV Terms**

- a. Submission of a Purchase Order or signing an Order Form constitutes acceptance by Owner of these FractalEV Terms. FractalEV reserves the right to modify, at its sole discretion, FractalEV Terms from time to time. By accessing and using the Application following notice detailing the amendments, the Owner accepts to respect and be bound by such amended FractalEV Terms.

## **3. Delivery and Installation**

- a. Shipping Costs; Terms. Owner shall be responsible for all costs of shipping, transportation, insurance, warehousing, and other charges and costs associated with shipment of the Charging Stations to Owner. All shipping dates are approximate and are based upon prompt receipt of all necessary information from Company. In no event shall FractalEV be liable for any costs related to delay in delivery of the Charging Stations. Owner's sole remedy for any material delay in delivery of the Charging Stations shall be cancellation of the order.
- b. Transfer of Title. Delivery of the Charging Stations to Owner shall be completed upon delivery of the Charging Stations to Owner's freight forwarder. Risk of loss and damage to the Charging Stations shall pass to Owner upon the delivery of such Charging Stations to such freight forwarder. FractalEV shall use commercially reasonable efforts to deliver Charging Stations ordered by Owner on the scheduled delivery date. All claims for non-conforming shipments must be made in writing to FractalEV within twenty (20) days of the passing of risk of loss and damage, as described above. Any claims not made within such period shall be deemed waived and released.

#### **4. FractalEV's Responsibilities**

- a. Operation of the Application. FractalEV agrees to provide and shall be solely responsible for (i) operating, maintaining, administering and supporting the Application and related infrastructure (other the Owner's Charging Stations and infrastructure for transmitting data Charging Stations to the Application); (ii) operating the Application in compliance with all applicable laws.
- b. Limitations on Responsibility. FractalEV shall not be responsible for, and makes no representation or warranty with respect to the following: (i) specific location(s) or number of Charging Stations now, or in the future, owned, operated and/or installed by persons other than Owner, (ii) continuous availability of electrical service to any of Owner's Charging Stations; (iii) continuous availability of any wireless or cellular communications network or Internet service provider network necessary for the continued operation of the Charging Station; (iv) availability of or interruption of the Application attributable to unauthorized intrusions; and/or (v) charging stations that are not registered with and activated on the Application.

#### **5. Owner's Responsibilities**

- a. Installation. The Owner is responsible for the installation of the Charging Station and receipt of any permits, authorizations, or governmental approvals required for such installation. Owner will hire and pay all fees of any contractors required to complete installation including any electrical contractor. At Owner's request, FractalEV may provide the names and contact information of one or more installers of Charging Stations; provided that, in providing such information FractalEV makes no representation or warranty of any kind, nor does it undertake any liability, with respect to or regarding the quality of any installation or other services performed by any such installer. EXCEPT AS SPECIFICALLY AGREED TO IN WRITING, FRACTALEV IS NOT RESPONSIBLE FOR AND WILL NOT BE LIABLE FOR, THE QUALITY OF ANY INSTALLATION SERVICES OR ANY CLAIM IN ANY WAY RELATING TO OR RESULTING FROM SUCH SERVICES.

All aspects of the installation must follow the guidelines provided by FractalEV, as described in the documentation, and must comply with any and all relevant building standards, laws, and regulations. The Owner is advised that federal, state, and municipal laws and special rules may apply to the installation of Charging Stations, and that a failure to follow such laws or rules is at the Owner's sole risk. The Owner assumes the cost of all equipment necessary for the connection of the Charging Station to the power grid and to the Application.

- b. Operation of the Charging Station. Owner agrees to be solely responsible for the operation of the charging station. Access to the Application does not represent any responsibility by FractalEV with regards to the operation of the Charging Station beyond that which is covered by the applicable warranty. Owner acknowledges that any unauthorized modification or repair of a Charging Station may void a Charging Station's warranty. Owner is responsible for paying directly to the utility provider all energy costs associated with the Charging Station.
  
- c. Use Restrictions and Limitations. Owner shall not:
  - i. interfere with or disrupt the Application, servers, or networks connected to the Application, or disobey any requirements, procedures, policies, or regulations of networks connected to the Application;
  - ii. attempt to gain unauthorized access to the Application or any subset of the Application or related systems or networks or any data contained therein, or access or use the Application through any technology or means other than those provided or expressly authorized by FractalEV;
  - iii. reverse engineer, decompile or otherwise attempt to extract the source code of the Application or any part thereof, or any Charging Station, except to the extent expressly permitted or required by applicable law;
  - iv. create derivative works based on any FractalEV Property;
  - v. remove, conceal or cover the FractalEV markings, labels, legends, trademarks, or trade names installed or placed on the Charging Stations or any peripheral equipment for use in connection with Owner's Charging Stations;
  - vi. use or permit use, by an act or omission, FractalEV's trademarks or other intellectual property in any manner that degrades, disparages or reflects adversely on FractalEV or its business or reputation or that would be detrimental to the FractalEV trademarks or their associated goodwill;
  - vii. except as otherwise expressly permitted by this Agreement or in any applicable data sheet relating to the Offering, copy, frame or mirror any part of the Offering
  - viii. access the Application for the purpose of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purpose, or for any improper purpose whatsoever, including, without limitation, in order to

build a competitive product or service or copy any features, functions, interface, graphics or “look and feel;”

- ix. use any robot, spider, site search/retrieval application, or other device to retrieve or index any portion of the Application;
- x. upload, transmit or introduce any Malicious Code to the Application;
- xi. use the Application to upload, post, display, transmit or otherwise make available (A) any inappropriate, defamatory, obscene, or unlawful content; (B) any content that infringes any patent, trademark, copyright, trade secret or other proprietary right of any party; (C) any messages, communication or other content that promotes pyramid schemes, chain letters, constitutes disruptive commercial messages or advertisements, or is prohibited by applicable law, these FractalEV Terms or the Documentation.

## 6. License

- a. License Grants by FractalEV. Subject to the FractalEV Terms and Owner’s compliance therewith, FractalEV grants to Owner a limited, revocable, non-exclusive license to access and use the Application over the internet in connection with the purchase of the Charging Station for the Owner’s business purposes.
- b. License Revocation by FractalEV. FractalEV reserves the right to revoke the license to access the Application for any Owner breach of any term of the FractalEV terms. If Owner fails to make any payment when due, FractalEV expressly reserves the right to revoke the license under this term.
- c. License Grant by Owner. As between Owner and FractalEV, Owner shall own the User Data. Owner hereby grants to FractalEV a transferrable, perpetual, irrevocable, fully-paid, royalty-free worldwide license to copy, use, access, reproduce, modify, collect, and store the User Data both for the purpose of providing the Application to the Owner, for creation and delivery of services, for internal analytics purposes, for improvements to the FractalEV Platform and for the purpose of collecting aggregate anonymized data in accordance with the FractalEV Privacy Policy.
- d. Suggestions. FractalEV shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual, unrestricted license to use or incorporate into the Offering any suggestions, enhancement requests, recommendations or other feedback provided by Owner or users of the Charging Station. For greater certainty, FractalEV shall have no obligation to modify the Offering to implement any suggestions, enhancement requests, recommendations or other feedback provided by Owner.

## 7. Intellectual Property and Reservation of Rights

- a. FractalEV expressly reserves all rights in the Offering and all materials provided by FractalEV hereunder and not specifically granted or licensed to Owner (“FractalEV Property”) pursuant to the terms of this Agreement. All right, title and interest in the FractalEV Property as well as any update, modification, adaptation, translation,

customization of Offering and all intellectual property rights therein will remain with FractalEV (or FractalEV's third party suppliers, as applicable).

## **8. Privacy Policy and Internet Security Disclaimer**

- a. Privacy Policy. Owner agrees to the terms of FractalEV's use, collection, storage and disclosure of User Data for the purposes authorized under these FractalEV Terms and in accordance with FractalEV's Privacy Policy and which is herein incorporated by reference and forms part of these FractalEV Terms.
- b. Internet Security Disclaimer. Owner understands that the technical processing and transmission of User Data is fundamentally necessary to use the Application. Therefore, Owner expressly consents to FractalEV's storage of User Data, which will involve transmission over the internet, and over various networks, only part of which may be owned and/or operated by FractalEV. Owner Acknowledges and understands that User Data may be accessed by unauthorized persons when communicated across the Internet, network communications facilities, telephone or other electronic means. FractalEV is not responsible for any User Data which is delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across public networks not owned or operated by FractalEV, including, the Internet, third party websites, and your local network. Owner agrees that FractalEV is not in any way responsible for any interference with Owner's use of or access to the Offering or security breaches arising from or attributable to the Internet and Owner waives any and all claims against FractalEV in connection therewith.

## **9. Warranties and Limitation of Liability**

- a. Warranty. The Charging Station is covered by the terms of FractalEV's standard parts only product Warranty (the "Warranty"), which will expire on three years from the date of installation. All applicable warranties with respect to the Charging Station are set forth in the Warranty and are hereby incorporated by reference into these Terms
- b. Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 9, FRACTALEV MAKES NO WARRANTY WITH RESPECT TO THE PERFORMANCE OF THE CHARGING STATIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. FRACTALEV EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT OF THIRD-PARTY RIGHTS BY THE CHARGING STATIONS, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FRACTALEV DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF CHARGING STATIONS.
- c. Limitation of Liability.
  - i. IN NO EVENT WILL FRACTALEV BE LIABLE FOR ANY (A) INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE (EVEN IF THE ADVENT OF SUCH DAMAGE WAS KNOWN OR COULD HAVE BEEN KNOWN BY FRACTALEV), (B) LIABILITY ARISING IN TORT, WHETHER OR NOT ARISING OUT OF FRACTALEV'S NEGLIGENCE, AND ALL LOSSES OR DAMAGES TO ANY PROPERTY OR FOR ANY PERSONAL INJURY OR ECONOMIC

LOSS OR DAMAGE CAUSED BY THE OFFERING, (C) CAUSE OF ACTION IN CONNECTION WITH THE APPLICATION OR ANY CHARGING STATION MALFUNCTION; (D) DAMAGE OR INJURY ARISING FROM, OR AS A RESULT OF, MISUSE, ABUSE OR INCORRECT INSTALLATION, INTEGRATION OR OPERATION OF THE APPLICATION OR ANY CHARGING STATION; (E) FOREGONE GROSS REVENUES OR INCURRED ELECTRICITY COST ASSOCIATED WITH ANY USE OF THE APPLICATION OR ANY CHARGING STATION; OR (F) DAMAGE OR INJURY ASSOCIATED WITH THE USE OF OR INABILITY TO USE ANY FEATURE OF THE APPLICATION OR ANY CHARGING STATION.

- ii. FRACTALEV DOES NOT WARRANT, REPRESENT OR GAURANTEE (A) THAT THE OFFERING WILL MEET THE OWNER'S REQUIREMENTS; (B) THAT USE/OPERATION OF THE APPLICATION WILL BE UNINTERRUPTED, ERROR-FREE OR SECURE; (C) THAT ANY DEFECT WITH THE APPLICATION WILL BE CORRECTED; (D) AS TO THE ACCURACY, TIMELINESS OR COMPLETENESS OF ANY COMMUNICATIONS USING THE APPLICATION OR INFORMATION CONTAINED IN SUCH COMMUNICATIONS; OR (E) THAT ANY SPECIFIC FEATURE OF THE APPLICATION WILL BE AVAILABLE.
  - iii. FOR THE PURPOSES OF THIS LIMITATION OF LIABILITY AND DISCLAIMERS SECTION, THE TERM "FRACTALEV" WILL INCLUDE FRACTALEV AND ITS PARENT COMPANY, AFFILIATES AND THEIR SUPPLIERS, LICENSORS, SUCCESORS, ASSIGNS, SHAREHOLDERS AND AGENTS.
  - iv. OWNERS SOLE REMEDY FOR ANY BREACH BY FRACTALEV OF ITS OBLIGATIONS OR WARRANTIES UNDER THESE TERMS SHALL BE LIMITED TO, AT FRACTALEV'S OPTION, REPAIR OR REPLACEMENT OF THOSE CHARGING STATIONS TO WHICH SUCH BREACH IS APPLICABLE OR REFUND BY FRACTALEV OF ALL OR A PART OF THE PURCHASE PRICE OF THE NON-CONFORMING CHARGING STATIONS
- d. Warranty Exclusions. The Warranty set forth in these FractalEV Terms is subject to certain exclusions as more fully set forth in the Warranty. OWNER HAS BEEN INFORMED AND UNDERSTANDS THAT, IN THE EVENT ANY SUCH EXCLUSION BECOMES APPLICABLE, ALL REPRESENTATIONS AND WARRANTIES CONTAINED IN THESE TERMS SHALL IMMEDIATELY BECOME NULL AND VOID.
- e. Exclusive Remedies. THE REMEDIES CONTAINED IN SECTION 9 ARE OWNER'S SOLE AND EXCLUSIVE REMEDIES AND ARE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES COMPANY MAY HAVE AGAINST FRACTALEV WITH RESPECT TO NONCONFORMANCE OF THE CHARGING STATIONS.

## 10. Notices

- a. Notices sent to either Party shall be effective when delivered in person, by mail or email (as applicable): one (1) day after being sent by overnight courier, two (2) days after being sent by first class mail postage prepaid to the official contact designated below, and immediately after being received by the other party's server. Notices must be in writing and delivered to the respective email or postal address set out on the Order Form. FractalEV may change its contact information by giving notice of such change to the

Owner. Owner may change its contact information by giving notice of such change to FractalEV.

## 11. Termination

- a. FractalEV may, at any time without the payment of any termination fee or penalty, terminate these FractalEV Terms immediately by providing written notice to Owner if:
  - i. Owner breaches any provision of this Agreement, and either the breach cannot be cured or, if the breach can be cured, it is not cured by the breaching Party within 30 days after breaching Party's receipt of written notice of such breach;
  - ii. FractalEV provides owner with 90 days prior written notice of its intention to terminate for any reason.
- b. Survival. Those provisions dealing with the Intellectual Property Rights of FractalEV, limitations of liability and disclaimers, restrictions of warranty, Choice of 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 as between the Parties hereto regardless of the termination of these FractalEV Terms.

## 12. General Provisions

- a. Choice of Law. These FractalEV Terms and any action related thereto shall be governed by and construed in accordance with the laws of the Province of Ontario, without regard to conflicts of law principles. The Parties hereby irrevocably attorn to the exclusive personal jurisdiction and venue of the Province of Ontario and the federal law of Canada applicable therein.
- b. Attribution and Publicity. Owner agrees to allow FractalEV to use Owner name and logo on the FractalEV website and other promotional literature for the purpose of indicating that Owner has used the Application and Charging Stations. The publicity rights granted by Owner to FractalEV shall survive the Termination of this Agreement.
- c. Construction. Except as otherwise provided herein, the Parties rights and remedies under these FractalEV Terms are cumulative. The term "including" means "including without limitation." The headings of sections of these FractalEV Terms are for reference purposes only and have no substantive effect. The terms "consent" or "discretion", when used in respect of FractalEV to withhold such consent or exercise such discretion (as applicable) arbitrarily and without any implied obligation to act reasonably or explain its decision to Owner.
- d. Force Majeure. Neither Party shall be liable for delays caused by events beyond its reasonable control, except non-payment of amounts due hereunder shall not be excused by this provision.
- e. Severable. Any provision hereof found by a tribunal of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect.

- f. Waiver. The failure of a party to claim a breach of any term of these FractalEV Terms shall not constitute a waiver of such breach or the waiver of the right of such party to enforce any subsequent breach of any term of these FractalEV Terms.
- g. Independent Contractors. Owner's relationship to FractalEV is that of an independent contractor, and neither Party is an agent or partner of the other. Owner will not have, and will not represent to any third party that it has, any authority to act on behalf of FractalEV.
- h. Entire Agreement. These FractalEV Terms, together with the Privacy Policy, Warranty and any Services Agreement signed by the Parties, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all other communications, whether written or oral. These FractalEV Terms may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.
- i. Amendments. No amendment, supplement, modification, waiver or termination of these FractalEV Terms and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party or Parties to be bound thereby. Any waiver by one Party of any default by the other Party will not affect or impair any rights of the first Party arising from any subsequent default by that other Party.
- j. English Language. It is the express wish of the parties that this Agreement and all related documents be drawn up in English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.