

**Last Updated: May 19, 2020**

## **ROLLING ENERGY RESOURCES TERMS OF SERVICE**

### **INTRODUCTION**

These Terms of Service (the “**Terms**”) are a legal agreement between you and Rolling Energy Resources, LLC (“**RER**”, “**we**”, “**our**”, or “**us**”) governing your access to and use of the RER’s websites (the “**Sites**”) and mobile applications provided by RER (together with the Sites, the “**Platform**”) and the online and offline services which RER agrees to provide to you in connection with the Platform (the “**Services**”). The Platform and Services may be provided to you on behalf of your energy service provider (your “**ESP**”).

You represent and certify that you are of legal age to form a binding contract and are not a person barred from receiving Services under the laws of the United States or other applicable jurisdictions. To register as a user of the Services you must be 18 years or over. In the event that you are agreeing to this Terms on behalf of a third party entity, you represent and warrant that you have sufficient right to bind such third party to these Terms, in which case, all references to “you” in these Terms shall be references to such third party.

**BY CHECKING I AGREE, OR BY OTHERWISE ACCESSING THE PLATFORM OR USING ANY OF THE SERVICES YOU AGREE TO BE BOUND BY THESE TERMS.**

In the case of inconsistencies between these Terms and information included in any other materials related to the Platform or the Services (e.g., promotional materials and mailers), these Terms will always govern and take precedence.

### **1. Services.**

- **The Services.** Depending on the particular Services you have selected to receive, the Services may include: (a) MyCharge reports; a connected electric vehicle analysis service that provides you with a monthly report with information on your electric vehicle, including charging, carbon mitigation, fuel costs based on charge times, and month to month comparisons; (b) a time-of-use rate assistance service that optimizes charging via your connected electric vehicle that shifts charging to less expensive (off-peak) rates by delaying the time at which the electric vehicle begins to charge; and (c) a demand response emergency service that electric utilities use to reduce the chance of interruption to electric service due to high load on the grid, thereby improving grid stability. You may opt-in to participate in this demand response service, during which your connected electric vehicle charging would have its charging delayed until the event is over. You may be incentivized by your local utility to participate in this service.

- **Availability.** RER uses reasonable efforts to ensure that the online features of the Services are available 24 hours a day, 7 days a week. However, there will be occasions when the Services will be interrupted for maintenance, upgrades, and emergency repairs or due to failure of telecommunications links and equipment that are beyond the control of RER. RER will use reasonable commercial efforts to minimize such disruption where it is within the reasonable control of RER. You agree that RER shall not be liable to you for any unavailability, modification, suspension, or discontinuance of the Services. You are responsible for obtaining access to the Services and understand that such access may involve third party fees (such as Internet service provider or airtime charges). You are responsible for those fees. In addition, you must provide and are responsible for all equipment necessary to access the Services.

- **Registration.** You may access online features of the Services through your account on the Platform (your “**Account**”). You may log into your Account using a unique username and password. You are responsible for safeguarding your password and you agree not to disclose your password to any third party. You are solely responsible for any activities or actions taken under your username, whether or not you have authorized such activities or actions. You agree that the information that you provide to RER about yourself upon registration of your Account, and at all other times, (“**Customer Data**”) will be true, accurate, current and complete, and you further agree that you will maintain and promptly update the Customer Data to ensure that it remains true, accurate, current and complete. You may not impersonate any other person or use a username or password that you are not authorized to use. RER reserves the right to require you to change your password for any reason at any time. If you become aware of any unauthorized use of your Account, you agree to notify RER immediately at [privacy@rollingenergyresources.com](mailto:privacy@rollingenergyresources.com).

- **Licenses.** Subject to these Terms, RER grants you a personal, limited, revocable, non-exclusive, and non-transferable license to access and use the Platform and Services. This license is exclusive to you and you may

not sub-license the use of the Platform. RER expressly retains all ownership rights, title, and interest in and to all aspects of the Services and the Platform, including, but not limited to, all current and future patents, copyrights, trademarks, trade secrets, know-how, and other proprietary rights included or embodied in the Platform. You may not modify the Platform or Services, create derivative works of the Platform or Services, or reverse engineer, reverse compile, reverse assemble or do any other operation with the Platform or Services that would reveal any source code, trade secrets, know-how or other proprietary information. This license shall not be construed or interpreted as granting or providing rights to you to use, reproduce, modify, distribute, perform, display, possess or control the source code or any other aspect of the Platform. You may not remove or modify any notice of confidentiality, trade secret, trademark or copyright encoded or embodied in the Platform or displayed by, on, or in the Platform. You may use the Platform only while these Terms remain in effect. Under no circumstances shall you have any rights of any kind in or to the Platform after any termination or expiration of your agreement to these Terms for any reason.

## 2. Data License Grant and Submissions.

- **Your Energy Usage Data.** Certain aspects of the Services rely on access to data about energy consumption at your home (“**Energy Usage Data**”). As a part of the registration process, we will provide instructions about how you can authorize RER to access this Energy Usage Data from your ESP. Some ESP’s cannot share Energy Usage Data. If your ESP cannot share Energy Usage Data with RER, or if you do not wish to have your ESP share your Energy Usage Data with RER, your use of certain aspects of the Services may be limited. In all cases, our access to, and use of, your Energy Usage Data will be governed by our Privacy Policy, which can be viewed by visiting: [rollingenergyresources.com/privacy](http://rollingenergyresources.com/privacy). (“**Privacy Policy**”).

- **Copyright in Your Content.** In connection with your access to, or use of, the Platform or the Services, you may make available certain text, data, content, information, or other materials (collectively, “**Content**”). RER does not claim ownership rights in any such Content that you make available. By submitting your Content and accepting the consideration set forth in these Terms, you unconditionally grant to RER a non-exclusive, perpetual, irrevocable, worldwide, fully-paid, transferable right and license, with the right to sub-license through multiple levels of sub licensees, under all of your intellectual property rights in the Content, to (a)reproduce, create derivative works of, distribute, publicly perform, publicly display, digitally transmit, and otherwise use the Content in any medium or format, whether now known or hereafter discovered and (b)exercise any and all other present or future rights in the Content. As between you and RER, you remain the owner of all Content that you make available in connection with the Services. You represent and warrant to RER that you are the owner of the copyright to the Content or that you have written permission from the copyright owner to use such Content. In addition, you warrant that all moral rights in any Content have been waived.

- **Feedback.** You hereby grant RER a perpetual, irrevocable, worldwide license to use any Feedback (as defined below) you communicate to RER, without compensation, without any obligation to report on such use, and without any other restriction. RER’s rights granted in the previous sentence include, without limitation, the right to exploit Feedback in any and every way, as well as the right to grant sublicenses. “Feedback” means any suggestion or idea for modifying the Platform or any of Services, including without limitation all intellectual property rights in any such suggestion or idea.

3. **Fees.** The Services are initially made available without charge. RER, however, reserves the right to charge for access to and use of the Services and Platform, or any component thereof. Any fees for the Services and Platform will be posted on the Platform.

4. **Third Party Software and Linking.** Although we may make software, hyperlinks, and other products of third-party companies available to you, your use of such products is subject to the respective terms and conditions imposed by the third party owning, manufacturing or distributing such products, and the agreement for your use will be between you and such third party. RER makes no warranty with regard to the products or website of any other entity. RER has no control over the content or availability of any third-party software or website. In particular, (a) RER makes no warranty that any third-party software you download or web Platform you visit will be free of any contaminating or destructive code, such as viruses, worms or Trojan horses and (b) RER notifies you that it is your responsibility to become familiar with any website privacy and other policies and terms of service, and to contact that website’s webmaster or website administrator with any concerns.

**5. Suspension and Termination.** RER reserves the right to suspend or terminate your access to and use of the Platform and Services, at any time, without notice, for any reason, including but not limited to (a) your breach of these Terms or any other policies or guidelines set forth by RER, or (b) conduct that RER believes is harmful to other users of the Platform or Services, or the business of RER or other third party information providers. Further, you agree that RER shall not be liable to you or any third party for any termination of your access to the Platform or Services. RER reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Services (or any part thereof) with or without notice. You agree that RER shall not be liable to you or to any third party for any modification, suspension, or discontinuance of the Services.

**6. Privacy.** RER respects the privacy of its users. RER collects, uses, and discloses information about you that you've made available to us, including your Energy Usage Data, in accordance with the RER Privacy Policy. You understand and agree that, notwithstanding any measures taken to prevent unauthorized disclosure, use of or connection to the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to confidential information. Accordingly, RER cannot and does not guarantee the privacy, security or authenticity of any information so transmitted over or stored in any system connected to the Internet.

**7. Disclaimer of Warranty.** THE PLATFORM AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. RER MAKES NO WARRANTY THAT THE PLATFORM OR THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE, THAT THE PLATFORM OR OUR SERVERS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, THAT THE PLATFORM, INCLUDING THE SERVICES WILL BE AVAILABLE, OR THAT DATA ARE SECURE FROM UNAUTHORIZED ACCESS. RER MAKES NO WARRANTY THAT YOUR VEHICLE WILL BE ADEQUATELY CHARGED FOR YOUR PARTICULAR USE. RER (AND IF APPLICABLE, YOUR ESP) MAKES NO WARRANTY REGARDING ANY SOFTWARE, GOODS, SERVICES, PROMOTIONS, OR THE DELIVERY OF ANY GOODS OR SERVICES, PURCHASED, ACCESSED OR OBTAINED THROUGH THE PLATFORM OR ADVERTISED THROUGH THE PLATFORM. NO ADVICE OR INFORMATION GIVEN BY RER, ITS EMPLOYEES OR AFFILIATES SHALL CREATE A WARRANTY.

**8. Rules of Conduct.**

- **Distribution of Content.** You agree that you will not distribute any Content that: (a) is defamatory, abusive, harassing, threatening, or racially or otherwise offensive; is violent, vulgar, or otherwise explicit; or otherwise harms or can reasonably be expected to harm any person or entity; (b) infringes or violates any right of a third party; or (c) contains a virus or other harmful component, or otherwise tampers with, impairs or damages the Platform or any connected network, or otherwise interferes with any person or entity's use or enjoyment of the Platform.

- **Use of the Services.** You expressly agree that you are solely responsible for any and all acts and omissions that occur under your Account or password, and you agree not to engage in any unacceptable uses of the Services, which include, without limitation, use of the Services to: (a) register for the Platform and the Services if you have not acknowledged reading and agreed to abide by these Terms and the Privacy Policy; (b) interfere, disrupt or attempt to gain unauthorized access to other accounts on the Platform or any other computer network; (c) use the Platform or the Services in connection with any commercial endeavors; (d) post your personal information such as instant messaging addresses, personal URLs, physical addresses and phone numbers in any publicly viewable areas of the Platform; (e) post or give out any financial information or transmit electronically or physically any money to other users; (f) create user accounts by automated means or under fraudulent or false pretenses; (g) create or transmit unsolicited electronic communications such as spam to users or promote any products or services; (h) submit or upload any type of material that is unlawful, harmful, hateful, threatening, abusive, harassing, defamatory, offensive, obscene, pornographic, lewd, lascivious, or otherwise objectionable, as determined by RER; (i) submit or upload any Content for which you do not own all applicable rights or that infringes the proprietary rights of other parties; (j) submit, engage in or upload any type of competitions or Content that can cause physical or mental harm to the participants or visitors to the Platform; (k) harass, threaten or intentionally embarrass or cause harm or distress to another person or group; (l) collect and publish any information about any of our users; (m) adapt, modify or reverse engineer any portion of the Services or the Platform; (n) use any spider, robot, retrieval application, or any other device to retrieve

any portion of the Platform; (o) reformat any of the pages that are part of the Platform; (p) disseminate, store or transmit viruses, worms, trojan horses or other malicious code or program; (q) encourage conduct that would constitute a criminal or civil offense; (r) violate any applicable federal, state, local or international law or regulation; (s) exploit any person, including but not limited to exploiting any child under 18 years of age; (t) invade the privacy of any person, including but not limited to submitting personally identifying or otherwise private information about a person without their consent; (u) solicit personal information from a child under 13 years of age; (v) submit false or misleading information to RER, the Platform or other users; or (w) engage in any other activity deemed by RER to be in conflict with the spirit of these Terms and the Privacy Policy.

- **Monitoring.** We cannot and do not assure that other users are or will be complying with the foregoing Rules of Conduct or any other provisions of these Terms, and, as between you and us, you hereby assume all risk of harm or injury resulting from any such lack of compliance.

**9. Proprietary and Privacy Protection for Other Users' Content on the Platform.** RER hereby notifies you that all the information, content, image files, software and materials on the Platform may be protected by U.S. and international copyright and other intellectual property laws and by other applicable laws, including privacy laws. RER is unable to provide you with permission to copy display or distribute material for which you do not own the copyright or other intellectual property rights. You may not copy or distribute such material without the written consent of the owner, and you are solely responsible for any copyright or other intellectual property law violations that you may incur as a result of your activities on the Platform. RER has the absolute right to terminate your account or exclude you from any Platform if you use our Services to violate the intellectual property rights or other rights of third parties. You agree to indemnify and hold RER harmless for any violation of this provision.

**10. Indemnity; Limitation of Liability.**

- You agree to indemnify, and hold RER, its officers, directors, employees and agents, harmless from and against any claims, liabilities, damages, losses, and expenses, including without limitation reasonable attorney's fees and costs, arising out of or in any way connected with (a) your access to or use of the Platform or Services; (b) your violation of these Terms; (c) your violation of any third party right, including without limitation any intellectual property right or any publicity, confidentiality, property or privacy right; (d) your Content; or (e) any claim that your use of the Platform or Services caused damage to a third party.

- YOU ACKNOWLEDGE THAT YOUR ACCESS TO AND USE OF THE PLATFORM OR SERVICES AND ANY RELIANCE UPON EITHER IS AT YOUR SOLE RISK, THAT YOU ASSUME FULL RESPONSIBILITY FOR ALL COSTS ASSOCIATED WITH ALL NECESSARY SERVICING OR REPAIRS OF ANY EQUIPMENT AND VEHICLES YOU USE IN CONNECTION WITH YOUR USE OF THE PLATFORM OR SERVICES. YOU AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL RER OR YOUR ESP, IF APPLICABLE, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, IMAGES, DATA OR OTHER INTANGIBLES, EVEN IF RER OR YOUR ESP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, THAT RESULT FROM THE USE OR THE INABILITY TO USE THE PLATFORM OR THE SERVICES, FROM ANY CHANGES TO THE PLATFORM OR THE SERVICES OR FROM UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR CONTENT. YOU SPECIFICALLY ACKNOWLEDGE THAT DOWN-TIME AND COMPUTER VIRUSES ARE RISKS INHERENT IN THE USE OF THE INTERNET AND SOFTWARE PRODUCTS, AND YOU AGREE TO ASSUME RESPONSIBILITY FOR ANY HARM OR DAMAGES OF ANY KIND OR CHARACTER WHATSOEVER RESULTING FROM THESE POSSIBLE HARMS. YOU ALSO SPECIFICALLY ACKNOWLEDGE THAT YOU MAY BE DISCLOSING SENSITIVE, PRIVATE AND CONFIDENTIAL INFORMATION ABOUT YOURSELF IN YOUR USE OF THE PLATFORM AND THE SERVICES AND YOU AGREE TO ASSUME RESPONSIBILITY FOR ANY HARM OR DAMAGES OF ANY KIND OR CHARACTER WHATSOEVER RESULTING FROM YOUR RELEASE OF SUCH CONTENT.

- IF YOU ARE DISSATISFIED WITH THE PLATFORM OR THE SERVICES OR WITH ANY OF THESE TERMS, OR FEEL RER HAS BREACHED THESE TERMS, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE PLATFORM AND THE SERVICES. THE TOTAL LIABILITY OF RER TO YOU FOR ANY CLAIM ARISING FROM OR RELATING TO THESE TERMS OR USE OF THE PLATFORM OR THE SERVICES SHALL NOT EXCEED \$100. IT IS THE INTENTION OF YOU AND RER

THAT THIS PROVISION BE CONSTRUED BY A COURT AS BEING THE BROADEST LIMITATION OF LIABILITY CONSISTENT WITH APPLICABLE LAW.

• SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF INCIDENTAL, CONSEQUENTIAL OR OTHER TYPES OF DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

## 11. General.

• **Modification.** RER may modify these Terms at any time. Modifications become effective immediately upon your first access to or use of the Platform or Services after the “Last Updated” date at the top of these Terms. If you have created an Account, we shall notify you of any material changes to these Terms by email sent to the address you have provided to RER for your Account. Your continued access to or use of the Platform or Services after the modifications have become effective will be deemed your conclusive acceptance of the modified Terms. If you do not agree with the modifications, do not access or use the Platform or Services.

• **Applicable Law and Dispute Resolution.** These Terms shall be governed by the laws of the State of Colorado without giving effect to any conflict of laws principles that may require the application of the law of another jurisdiction. If you believe that RER has not adhered to these Terms, please contact us by e-mail at [privacy@rollingenergyresources.com](mailto:privacy@rollingenergyresources.com). We will do our best to address your concerns. If you feel that your complaint has been addressed incompletely, we invite you to let us know for further investigation. If you and RER are unable to reach a resolution to the dispute, you and RER will settle the dispute exclusively under the rules of the American Arbitration Association ([www.adr.org](http://www.adr.org)) at its Denver, Colorado office. Any election to arbitrate by one party will be final and binding on the other. **YOU UNDERSTAND THAT IF EITHER PARTY ELECTS TO ARBITRATE, NEITHER PARTY WILL HAVE THE RIGHT TO SUE IN COURT OR HAVE A JURY TRIAL.** You and RER agree that any arbitration will be limited to the dispute between RER and you individually. **YOU ACKNOWLEDGE AND AGREE THAT YOU AND RER ARE EACH WAIVING THE RIGHT TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING.** Further, unless both you and RER otherwise agree in writing, an arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. Regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the use of the Platform or the Services or these Terms must be brought, if at all, within one year from the accrual of the claim or cause of action or be forever barred..

• **No Resale of Services.** You agree not to reproduce, duplicate, copy, sell, trade, resell or exploit for any commercial purposes, any portion of the Services, use of the Services, or access to the Services.

• **Independent Contractors.** No joint venture, partnership, employment, or agency relationship exists between you and RER as a result of these Terms or use of the Platform or the Services.

• **Enforcement.** If any legal action is brought to enforce these Terms, the prevailing party will be entitled to reimbursement of its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive from the other party.

• **Force Majeure.** RER will not be liable by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, epidemics, pandemics, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause which is beyond RER's reasonable control.

• **Waiver.** The failure of RER to enforce any right or provision in these Terms will not constitute a waiver of such right or provision unless acknowledged and agreed to by RER in writing.

• **Construction.** The headings of Sections of these Terms are for convenience and are not to be used in interpretation.

• **Contact.** RER is located in Boulder, Colorado. Any questions, comments, or suggestions, including any report of violation of these Terms should be provided to the Administrator as follows:

By E-mail: [privacy@rollingenergyresources.com](mailto:privacy@rollingenergyresources.com)

By Postal Mail: 2500 30<sup>th</sup> Street, Suite 207, Boulder CO 80301

- **Entire Agreement.** These Terms constitute the entire agreement between you and RER and govern your use of the Platform and the Services, superseding any prior agreements between you and RER. The failure of RER to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision. If any provision of these Terms is found by a court of competent jurisdiction to be invalid, you and RER nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms shall remain in full force and effect.