**LICENSE TERMS EMBION EMS**

**CONSIDERING:**

1. The Customer has requested Embion to grant a license for Software in connection with the operation of a product marketed by Embion, known as the Embion EMS controller (formerly: SolarGateway Pro), hereinafter referred to as the Product. Embion is the owner and rights holder of the Software.

2. Embion is willing to grant that License to the Customer under the following terms and conditions.

**THE PARTIES DECLARE TO HAVE AGREED AS FOLLOWS:**

**1. Subject of the Agreement**

1.1 In this License Agreement, the following terms shall have the meanings set out below, unless expressly indicated otherwise:

Seller: means Embion B.V., with registered office in Tilburg at Kalundborg 10 (5026 SE), registered in the trade register under number 82594201, and reachable via info@embion.nl and telephone +31 (0)85 0435861.

Embion: means Embion B.V., with registered office in Tilburg at Kalundborg 10 (5026 SE), registered in the trade register under number 82594201, and reachable via info@embion.nl and telephone +31 (0)85 0435861.

Customer: purchaser of the Product and/or recipient of the License;

End Customers: the own customers of an Installer;

Installer: a professional party responsible for the installation of the Product and the activation of the License at an End Customer. An Installer may also be a Customer;

Order: written confirmation of delivery of Products by Seller/Embion;

Parties: Customer and Embion collectively.

Product: means the Embion EMS controller;

License: the permission to use the Seller's Software without acquiring ownership rights over it;

License Fee: the compensation agreed upon between Embion and Customer for the use of the License;

License Voucher: a voucher with a specified value that can only be redeemed for (partial) payment of the License Fee;

In Writing: on paper, by e-mail, or via a comparable medium;

Software: all software developed by or for Embion intended for application in the Product, such as the software operating the Product, the digital environment enabling an end user to access the Product, and applications used in the installation of the Product and the License. This includes both backend and frontend software.

1.2 Embion hereby grants to the Customer, who in turn accepts from Embion, a License after installation of the Product by the Customer. The License covers the temporary use of the Software. The subject of the License Agreement is therefore a time-limited, non-exclusive right to use the Software. This right is granted in return for payment of a periodic fee. It is expressly not intended to transfer IP rights or any other ownership rights to the Customer.

1.3 The Product is not included in this License Agreement. A separate purchase agreement has been or will be concluded for the Product, which is inextricably linked to this License Agreement.

1.4 The License includes receipt of new releases of the Software.

1.5 During the term of the License Agreement, the Parties may agree in writing that this License Agreement shall apply to a Product with a different ID number, for example in the event of a defective Product being replaced. It is also possible for multiple Products to fall under one License Agreement. A License Fee will be due for each individual Product.

1.6 In return, the Customer shall pay a License Fee in accordance with Article 5.1 et seq.

1.7 The general terms and conditions of Embion apply to this License Agreement.


2  **Place of Delivery**

2.1 The License, and thus the Software, will be delivered digitally. The Customer shall have a certified Installer install the Product and subsequently the Software in accordance with the accompanying documentation. Embion is never responsible for installation. Embion works with a network of certified Installers and therefore recommends that one of these Installers carry out the installation.

2.2 After the Product is activated and the Customer requests a License under acceptance of the terms of this License Agreement, Embion shall deliver it.

## 3  Acceptance and Transfer of Rights

3.1 Upon delivery to the Customer, the date on which the delivery note is issued shall be deemed the date of Acceptance.

3.2 Until delivery, the risk of damage or loss of the Software rests with Embion. The right of use transfers to the Customer after Acceptance of the (first) invoice for the License Fee.

3.3 After Acceptance, Embion is not obliged under the License Agreement to repair defects in the Software covered by the License, except in cases where:

   a. The Customer can invoke rights under the warranty(ies) included in Embion's general terms and conditions;
   b. The defects were hidden at the time of Acceptance and could not reasonably have been detected by the Customer. In such cases, Embion is obliged to remedy these defects in accordance with the provisions of the general terms and conditions.

## 4  Duration of Agreement

4.1 The License Agreement is entered into for a period of two years, unless the Parties agree otherwise in writing. The License Agreement commences upon Acceptance.

4.2 The Parties are entitled to terminate the License Agreement at the end of the term referred to in paragraph 1, subject to a notice period of three months. Early termination is not permitted, except in cases provided for in this Agreement.

4.3 After the period referred to in paragraph 1, the License Agreement shall be tacitly renewed for one year.

4.4 After the renewal referred to in 4.3, the Customer shall be entitled to a one-time free upgrade of the Product, insofar as Embion deems this technically necessary. Embion will deliver this Product to the Customer at that time. The Product will be supplied with the Software. Installation of the Product is the responsibility of the Customer, who must also arrange and, if necessary, pay for the installation by a certified Installer.

4.5 After provision of a new Product, this License Agreement shall apply to the new Product and the old Product will no longer be supported. The Parties shall in that case apply Article 1.5.

4.6 Either Party may also terminate the License Agreement in whole or in part with immediate effect, without any obligation to compensate for any damages, if any of the following circumstances occur:
   A. Bankruptcy of the other Party is filed;
   B. The other Party is declared bankrupt;
   C. The other Party is granted (provisional) suspension of payment;
   D. The business of the other Party is terminated or transferred in whole or in part to a third party;
   E. The Customer fails to comply with one or more provisions of the License Agreement and/or related agreements.

4.7 The License Agreement shall otherwise only terminate if both Parties agree in Writing to terminate it.

## 5 **Prices**

5.1 The price for the License depends in part on the maximum contracted capacity and the desired functionalities at Acceptance. The price relates to all Software to be made available by Embion under the License Agreement. In addition to this price, the Customer may purchase additional software options, which will also incur charges and also fall under this License Agreement.

5.2 At the time of Acceptance, the Customer shall, via the Software, specify the maximum contracted capacity and desired functionality, which determines the type of License. The Customer shall then have a trial period of 14 days after Acceptance to test the functionality of the Software and, if necessary, adjust it. After this trial period, Embion shall contact the Customer to establish all the information required for the License Agreement, after which Embion shall send the License Agreement to the Customer in Writing for signature. Embion shall then send the invoice 5 working days after sending the License Agreement, which the Customer must pay within the stipulated period

5.3 The License Fee determined under 5.2 may not be reduced during the term of the License Agreement. However, the fee may be increased if the Customer makes changes to the installation via the Software that require a higher License Fee.

5.4 To the extent that Embion is required to charge VAT, the amounts specified in this Agreement shall be increased by the applicable VAT rate at the time the service is performed. All prices and rates are always expressed in EURO.

5.5 With reference to Embion's general terms and conditions, Embion may annually index the License Fee.

## 6 Payment

6.1 The agreed License Fee will be invoiced to the Customer in full and in advance upon Acceptance, unless the Parties have agreed otherwise in Writing.

6.2 Embion shall send invoices to the Customer stating the date, license code, Product ID number on which the Software is installed, the location of the Product, and other information provided by the Customer in Writing.

6.3 The Customer shall pay the amounts due under the License Agreement after receipt of the relevant invoice and within the stipulated payment term to Embion. The License Fee may be paid in whole or in part with a License Voucher.

6.4 If the Customer fails to pay the invoice within the period referred to in 6.3 without valid reason, the Customer shall automatically owe the compensation referred to in Article 3.7 of the general terms and conditions.

6.5 If payment is not made on time, Embion shall have the right to disable the Software (and possibly the Product as well) until the Customer has paid the amounts due. This means the Product will no longer be able to use Embion's internet services, and new software releases will no longer be updated. As a result, warranties will lapse. The Product may still allow connected devices to function, but optimizations and electricity trading will no longer be possible, and data logging will be disabled. Any restart costs will be charged to the Customer by Embion on a post-calculation basis.

## 7   Terms of Use

7.1 The Customer is permitted to use, display, execute, or store the Software, insofar as this is consistent with the intended use of the Software.

7.2 The Customer is not permitted to:

   A.  Provide the License and Software for use by third parties or use it for third parties;
   B.  Modify or adapt the Software;
   C.  Reverse engineer the Software source code. If the Customer requires information about the (architecture of the) Software, they shall submit a written, substantiated request to Embion for the required information;
   D.  Infringe any copyrights, trademarks, trade names, and/or other forms of IP rights relating to the License, Software, and Product.

7.3 Embion may, upon request and after prior notice, verify whether the Customer is using the Software in accordance with the License Agreement and related agreements, conditions, and documentation. In the event of a breach, the Customer shall reimburse Embion for the costs of such an audit and immediately cease the infringement.

7.4 Embion regularly issues new releases of the Software with new and/or improved functionalities. The Customer will be informed in Writing when a new release is

available. The Customer may test this release free of charge for four weeks, provided that bugs and other issues are immediately reported to Embion. After this test phase, Embion will also automatically install the new release remotely, unless the Parties agree otherwise in Writing. Embion is not liable for complications or damages incurred by the Customer during the test phase. After a new version is released, previous versions will no longer be supported, and Embion cannot be held liable for any negative consequences thereof.

## 8 Transfer of Rights and Obligations

8.1 Neither Party is entitled to transfer the rights and obligations under the License Agreement to a third party without the prior written consent of the other Party. Such consent will not be unreasonably withheld; however, the Party granting consent is entitled to attach conditions to the consent.

8.2 If Embion wishes to use the services of third parties in the performance of the License Agreement, whether by subcontracting or by temporary hiring of staff, Embion is hereby authorized to do so. This does not affect Embion's responsibility and liability for fulfilling its obligations under the License Agreement and its obligations under tax and social security legislation.

8.3 Except as provided in Article 8.1, the License is non-transferable. Furthermore, the License is personal and non-sublicensable.

## 9 Intellectual Property Rights

9.1 The intellectual property rights relating to the Software and documents provided under the License Agreement rest with Embion. Without prior Written consent from Embion, the Customer shall not infringe these rights. This prohibition applies broadly, meaning that the Customer may not use, process, or share the Software or related information in violation of Embion's IP rights, nor reproduce, modify, or reverse engineer the Software. The Customer may also not remove or bypass any security features or usage restrictions.

9.2 All data collected by the Product and/or the Software may be used by Embion for analysis purposes. The Customer therefore has no IP rights or other exclusive rights to data collected, processed, or modified by Embion. Data and analysis results will only be shared with third parties in anonymized form. In this respect, Embion shall act in accordance with its Privacy Statement, which can be found at [www.embion.eu](www.embion.eu).

9.3 Embion shall indemnify the Customer in legal proceedings brought against the Customer by third parties claiming that use of the Software infringes the intellectual property rights of such third party, unless:

    A. The Customer has not immediately informed Embion in Writing of such a claim;

    B. The claim arises from the fact that the Customer has modified the Software and/or had it modified by third parties;

    C. The claim arises from the improper use of the Software by the Customer.

9.4 The indemnity referred to in Article 9.3 applies only if the Customer involves Embion from the outset in the handling of the third-party claim, determines the steps to be taken in consultation with Embion, and provides all necessary cooperation to Embion and/or third parties engaged by it.

9.5 The Customer hereby agrees that the outcome of a third-party claim may mean that Embion must modify the Software, or that Embion may immediately terminate the License Agreement. In the latter case, prepaid license fees shall be refunded by Embion.

## 10 <u>Confidentiality</u>

10.1   Embion and the Customer shall make every effort to prevent the confidential information of the other Party from becoming known to or falling into the hands of third parties. This does not apply to information that is already publicly known, except where such publicity results from a breach of this confidentiality obligation, or where a Party is compelled to disclose confidential information by a competent (judicial) authority.

10.2   The Customer shall not share offers, quotations, orders, invoices, or other commercial communications received from Embion with third parties.

## 11  Dissolution

11.1 In addition to what is provided elsewhere in the License Agreement:

A. Either Party is entitled to dissolve the License Agreement extrajudicially by means of a registered letter if the other Party remains in default of fulfilling its obligations under the License Agreement even after a Written notice granting a reasonable period of time;

B. The Customer is entitled to dissolve the License Agreement extrajudicially by means of a registered letter, without prior notice of default, if Embion files for (provisional) suspension of payment or is granted (provisional) suspension of payment; if Embion files for bankruptcy or is declared bankrupt; if Embion's business is liquidated; if Embion ceases its current business operations; if a substantial part of Embion's assets or the Products and/or Software are seized; or if Embion can otherwise no longer reasonably be deemed capable of fulfilling the obligations under this License Agreement.

## 12  General

12.1 The general terms and conditions of Embion apply to every agreement and/or Order entered into with Embion. In the event of conflict between the provisions of the License Agreement and the general terms and conditions, the provisions of the License Agreement shall prevail. The same applies in the event of conflict between the License Agreement and other applicable documents, such as product and software documentation, safety instructions, and quotations.

12.2 This License Agreement is inextricably linked to the purchase agreement for the Product. This means that use of the Product and the Software installed on it requires a License Agreement, and vice versa.