



TERMS AND CONDITIONS

1. EV CLOUD SUBSCRIPTION SERVICE AND SUPPORT

1.1 As soon as commercially reasonable, the parties shall undertake completion of the Initial Commissioning. As used herein, "Initial Commissioning" means the integration of the EV Cloud Subscription Service with any new or pre-existing electric vehicle service equipment for which Customer has purchased the EV Cloud Subscription Service.

1.2 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the EV Cloud Subscription Service in accordance with the Service Level Terms attached hereto as Exhibit A. As part of the registration process, Customer will identify an administrative user name and password for Customer's administrative access of the EV Cloud Subscription Service ("Admin Portal").

1.3 Subject to the terms hereof, Company will provide Customer with reasonable technical support services for the EV Cloud Subscription Service pursuant to Exhibit B.

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the EV Cloud Subscription Service or any software, documentation or data related to the EV Cloud Subscription Service ("Software"); modify, translate, or create derivative works based on the EV Cloud Subscription Service or any Software (except to the extent expressly permitted by Company or authorized within the EV Cloud Subscription Service); use the EV Cloud Subscription Service or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third; interfere with or disrupt the integrity of the EV Cloud Subscription Service; or remove any proprietary notices or labels. Company hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to use such EV Cloud Subscription Service and Software during the Term only in connection with the EV Cloud Subscription Service.

2.2 Customer represents, covenants, and warrants that Customer will use the EV Cloud Subscription Service only in compliance with Company's standard published policies then in effect (the "Policy") and all applicable laws and regulations, including but not limited to regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Customer hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or

otherwise from Customer's use of EV Cloud Subscription Service. Although Company has no obligation to monitor Customer's use of the EV Cloud Subscription Service, Company may do so and may prohibit any use of the EV Cloud Subscription Service it believes may be (or alleged to be) in violation of the foregoing.

2.3 Customer shall be responsible for obtaining and maintaining any equipment and infrastructure needed to connect to, access or otherwise use the EV Cloud Subscription Service (collectively, "Equipment"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, Customer passwords (including but not limited to administrative passwords for the Admin Portal) and files, and for all uses of Customer account or the Equipment.

2.4 Customer represents and warrants that it has the power and authority to (i) enter into and be bound by this Agreement, and (ii) utilize, without restriction, the electricity connected to its electric vehicle service equipment.

2.5 Customer is solely responsible for setting the rates of any Base Session Fees and Driver Discounts (as those terms are defined in Section 4.1) and maintaining the accuracy of its contact information in the Admin Portal.

3. CONFIDENTIALITY; PROPRIETARY RIGHTS

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the EV Cloud Subscription Service. Proprietary Information of Customer includes non-public data provided by Customer to Company to enable the provision of the EV Cloud Subscription Service ("Customer Data"). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the EV Cloud Subscription Service or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

3.2 Customer shall own all right, title and interest in and to the Customer Data. Company shall own and retain all right, title and interest in and to (a) the EV Cloud Subscription Service and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with implementation services, such as custom API development (“Implementation Services”) or support, and (c) all intellectual property rights related to any of the foregoing.

3.3 Notwithstanding anything to the contrary, Company shall have the right collect and analyze data and other information relating to the provision, use and performance of various aspects of the EV Cloud Subscription Service and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the EV Cloud Subscription Service for other development, diagnostic and corrective purposes in connection with the EV Cloud Subscription Service and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

4. CONSIDERATION; PAYMENT OF FEES; FINANCIAL LIABILITIES

4.1 As used in this Section 4, the following definitions shall apply:

(i) “Base Session Fees” means the gross fees charged to Drivers for Drivers’ use of Customer’s electric vehicle service equipment, according to the pricing policy designated by Customer via the Admin Portal, less any Driver Discounts.

(ii) “Charge Backs” means any costs or loss incurred by Company in connection with the expected collection of the Base Session Fees, including but not limited to payment reversals, chargeback fees or refunds issued to Drivers.

(iii) “Driver Discounts” means any applicable discounts to charging session rates that have been designated by the Customer via the Admin Portal.

(iv) “Drivers” means end users that have created an account with Company to utilize Customer’s electric vehicle service equipment that has been integrated with the EV Cloud Subscription Service.

(v) “Net Deficit” means the quarterly sum of the (a) Transaction Fees, (b) Charge Backs, and (c) Tax and Compliance Costs *less* the Base Session Fees.

(vi) “Net Session Fees” means the quarterly Base Session Fees *less* the quarterly sum of the (a) Transaction Fees, (b) Charge Backs, and (c) Tax and Compliance Costs.

(vii) “Set-Off” means the agreement by Company to collect any Net Deficit owed by Customer from future Net Session Fees.

(viii) “Tax and Compliance Costs” means any Taxes and Compliance Costs paid by the Company (as such terms are defined in Sections 4.7 and 4.8).

4.2 Customer will pay Company the then applicable Fees for the EV Cloud Subscription Service and Implementation Services described in the Sales Order.

4.3 Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company’s customer support department (host_support@evconnect.com).

4.4 So long as the quarterly Base Session Fees exceed the quarterly sum of all Transaction Fees, Charge Backs and Tax and Compliance Costs, Customer shall be entitled to any Net Session Fees, less any applicable Set-Offs, on a quarterly basis, which shall be payable by Company to Customer on or by the thirtieth (30th) day following the end of each fiscal quarter.

4.5 In the event the quarterly sum of Transaction Fees, Charge Backs and Tax and Compliance Costs exceeds the quarterly Base Session Fees, Company shall be entitled to the Net Deficit, on a quarterly basis, which, unless the Company has agreed to a Set-Off, shall be payable by Customer to Company on or by the thirtieth (30th) day following Company’s issuance of an invoice for such Net Deficit. In the event a Net Deficit occurs on an on-going basis (more than twice in a twelve-month period), Company may require Customer to provide authorization for Company to automatically debit a bank account or charge a credit card for such Net Deficits fees.

4.6 The Commissioning Fee shall be immediately due and payable upon the Effective Date. Company may choose to bill through an invoice, in which case, full payment for invoices issued must be received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service.

4.7 Customer shall be financially responsible for all taxes associated with EV Cloud Subscription Service, Base Session Fees and Net Session Fees (including but not limited to any obligations that arise in connection with the sale of electricity, import or export) other than U.S. taxes based on Company’s net income (“Taxes”).

4.8 Customer shall be financially responsible for all other fees charged by regulatory bodies in connection with the use of EV Cloud Subscription Service (including but not limited to fees that must be charged to Drivers, permit fees, and customs fees) (“Compliance Costs”).

4.9 Any Taxes or Compliance Costs paid directly by Customer shall not be considered a part of, a deduction from, or an offset against, payments due to Company hereunder.

4.10 Company may immediately deactivate the EV Cloud Subscription Service in the event full payment for invoices issued have not been received by Company within thirty (30) days after the mailing date of the invoice. In the event this Agreement is not terminated pursuant to Section 5, Customer may reactivate the EV Cloud Subscription Service upon payment of all outstanding invoices and a reactivation fee of \$250.

4.11 In addition to the Commission Fees and Transaction Fees, where allowed by law, Company shall be entitled to any credits, benefits, rebates, refunds, or other intangible incentives, resulting from Customer’s use of its electric vehicle service equipment, which is facilitated by the EV Cloud Subscription Service.

4.12 Customer acknowledges and agrees that Company may from time-to-time, without notice to Customer, charge an access fee to Drivers. Upon receipt of each Driver’s consent to the access fee, such access fees shall be charged directly to Drivers. Any access fees charged by Company to Drivers shall not be incorporated into the Base Session Fee or reported to Customer.

5. TERM AND TERMINATION

5.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Sales Order, and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the “Term”), unless either party requests termination at least thirty (30) days prior to the end of the then-current term.

5.2 Customer may terminate this Agreement in the event Company (i) fails to complete the Initial Commissioning within ten (10) business days’ after written notice of the applicable electric vehicle service equipment’s availability for the Initial Commissioning, (ii) is unable to cure a breach of Exhibit B within five (5) business day of notice, or (iii) becomes the subject of a petition in bankruptcy or any other proceeding related to insolvency, receivership, liquidation or an assignment for the benefit of creditors. Upon such termination, to the extent applicable, Customer shall remain obligated to pay in-full for the EV Cloud Subscription Service up to and including the last day on which the EV Cloud Subscription Service is provided. In the event Customer paid any Fees in advance, Customer shall be entitled to a refund of any prepaid, unused fees for the EV Cloud Subscription Service and Initial Commissioning.

5.3 Company may terminate this Agreement for convenience with thirty (30) days’ notice. Upon such

termination, Customer shall remain obligated to pay in full for the EV Cloud Subscription Service up to and including the last day on which the EV Cloud Subscription Service is provided. In the event Customer paid any Fees in advance, Customer shall be entitled to a refund of any prepaid, unused fees for the EV Cloud Subscription Service.

5.4 Company may terminate this Agreement in the event Customer fails to cure its breach of Section 2.3 within thirty (30) days of its written notice. In the event of such termination prior to the Initial Commissioning, Company shall be entitled to the Initial Commissioning Fee.

5.5 Either party may also terminate this Agreement upon thirty (30) days’ notice. Where this Agreement is terminated for any reason other than those contemplated under Sections 5.2, 5.3, or 7, in addition to any other remedies the parties may have, Customer shall remain obligated to pay all Fees required under the Initial Term (or in the event of a renewal, the Term).

5.6 All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

6. WARRANTY AND DISCLAIMER

Company shall use reasonable efforts consistent with prevailing industry standards to maintain the EV Cloud Subscription Service in a manner which minimizes errors and interruptions in the EV Cloud Subscription Service and shall perform the Implementation Services in a professional and workmanlike manner. EV Cloud Subscription Service may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company’s reasonable control, including but not limited to cellular, data network or equipment failures, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, COMPANY DOES NOT WARRANT THAT THE EV CLOUD SUBSCRIPTION SERVICE WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE EV CLOUD SUBSCRIPTION SERVICE. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE EV CLOUD SUBSCRIPTION SERVICE AND IMPLEMENTATION SERVICES ARE PROVIDED “AS IS” AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7. INDEMNITY

Company shall hold Customer harmless from liability to third parties resulting from infringement by the Service of any

United States patent or any copyright or misappropriation of any trade secret, provided Company is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Company will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to portions or components of the Service (i) not supplied by Company, (ii) made in whole or in part in accordance with Customer specifications, (iii) that are modified after delivery by Company, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of the Service is not strictly in accordance with this Agreement. If, due to a claim of infringement, the EV Cloud Subscription Service is held by a court of competent jurisdiction to be or are believed by Company to be infringing, Company may, at its option and expense (a) replace or modify the EV Cloud Subscription Service to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the EV Cloud Subscription Service, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid, unused fees for the EV Cloud Subscription Service.

8. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO COMPANY FOR THE EV CLOUD SUBSCRIPTION SERVICE UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN

ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. Any disagreements shall be settled by arbitration in accordance with the rules of JAMS, Inc. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions.

EXHIBIT A

Service Level Terms

Except for scheduled maintenance and any downtime resulting from outages of third-party connections or utilities (including but not limited to electrical, cellular and Internet service interruptions) or other reasons beyond Company's control ("permitted downtime"), Company shall ensure the reasonable functionality of the EV Cloud Subscription Service. In the event non-permitted downtime continues for more than three (3) business days, Customer's sole and exclusive remedy, and Company's entire liability, in connection with the EV Cloud Subscription Service availability shall be termination of the Agreement.

EXHIBIT B

Support Terms

Company will provide technical support to Customer via both telephone and electronic mail on weekdays during the hours of 8:00 am through 5:00 pm Pacific Time, with the exclusion of Federal Holidays (“Support Hours”).

Customer may initiate a Helpdesk ticket during Support Hours by calling (888) 780-0062.

Company will use commercially reasonable efforts to respond to all Helpdesk tickets within one (1) business day.

EXHIBIT C

Purchase Agreement

This Purchase Agreement (“Purchase Agreement”) governs any Customer purchase of EVSEs and Additional Products (the “Purchased Goods”) set forth on the Sales Order and Quote. In the event the Customer has not purchased any EVSEs or Additional Products, this Purchase Agreement is not applicable.

1. Purchase

- A. **Orders.** Company shall process Customer’s Purchased Goods order according to the specifications set forth on the Quote and Sales Order.
- B. **Order Modifications.** In the event the Purchased Goods specified in the Quote are unavailable or on back order, Company may process an order for substitute Purchased Goods upon Customer’s written consent.
- C. **Right to Delay Orders.** Company may withhold shipments to and delay installation for Customer if Customer has (i) failed to provide any required payments, including the Initial Deposit or any other invoiced payments due, or (ii) is otherwise in violation of this Purchase Agreement. It is understood and agreed that Company may condition Customer’s order on certain credit and/or prepayment terms as Company, in its reasonable discretion, determines appropriate due to, among other things, Customer’s prior payment history and/or the size of the order.

2. Delivery

- A. **Shipping Date.** Upon confirmation from the Purchased Goods manufacturer, Company shall confirm the expected shipping date with Customer. All shipping dates are approximate and are based upon prompt receipt of all necessary information from the Customer.
- B. **Shipping Costs; Terms.** Unless otherwise agreed to by the Parties in writing, all shipping shall be FOB Origin and Customer shall be responsible for all costs of shipping, transportation, insurance, warehousing, and other charges and costs associated with shipment of the Purchased Goods. In no event shall Company be liable for any costs related to delays in delivery of the Purchased Goods. Customer’s sole remedy for any material delay in delivery of the Purchased Goods shall be cancellation of the order, which must be made in writing to Company no later than 24 hours before the expected shipping day of the Purchased Goods.
- C. **Acceptance.** Customer shall immediately inspect the Purchased Goods upon delivery. In the event Customer fails to provide Company with a written rejection (detailing any defects) within two (2) business days of delivery, the Purchased Goods shall be deemed accepted. If the delivery of the Purchased Goods occurs in separate shipments to be separately accepted by Customer, Customer may only refuse such portion of a shipment that fails to comply with the requirements of this Purchase Agreement.

3. Invoicing and Payment

- A. **Invoicing.** Unless otherwise agreed in writing by the Parties, Company shall issue an invoice to the Customer for the final payment for the Purchased Goods on or after the date the Purchased Goods have shipped.
- B. **Payment Terms.** All invoices shall be paid within thirty (30) days of Customer’s receipt thereof. Invoices not paid when due are subject to interest at the rate of one and one-half percent (1.5%) per month or, if less, the highest rate allowed under applicable law.
- C. **No Right of Return.** All sales are final and Customer shall have no right of return following Customer’s acceptance.
- D. **Taxes, Duties, Etc.** Except to the extent otherwise expressly stated, all amounts due to Company under this Purchase Agreement and/or the applicable Sales Order and Quote are net of any freight, storage, insurance (collectively “Shipping Costs”) and any duties, any sales, use, excise, value-added, withholding, or similar tax of any kind and any and all other fees and charges of any nature (collectively, “Taxes”) imposed by the United States or any foreign, state or local governmental entity or instrumentality thereof on the purchase, shipment, use or sale of the Purchased Goods by or to the Customer, other

than taxes measured by Company's income, corporate franchise, or personal property ownership. Where applicable, Company shall bill Customer for the full amount of such Shipping Costs and Taxes and shall include such amount as a separate line item on the invoice(s) sent to the Customer; provided that, Company's failure to so bill the Customer shall not relieve Customer from the obligation to pay any Shipping Costs and Taxes described in this Section 3.E.

- E. **Payment in Dollars.** All amount payable under this Purchase Agreement shall be paid in United States Dollars. If Company is located outside of the United States, Customer agrees to take all necessary actions required, including registration of this Purchase Agreement and application for permission to make payments to Company hereunder, with the appropriate government authorities in the Customer's jurisdiction, or such other institution or official, and to take such other measures as may be necessary to comply with any government currency controls in effect in Customer's jurisdiction, as soon as reasonably practicable after execution of this Purchase Agreement. Customer shall remit payment to Company, at Customer's option: (i) via wire or ACH transfer to an account designated by Company in writing from time-to-time; or (ii) by check drawn on a registered and certified bank or financial institution, made out to "EV Connect, Inc."
- F. **Disputes.** In the event Customer disputes any portion or all of an invoice, it shall notify Company in writing of the amount in dispute and the reason for its disagreement within twenty-one (21) days of receipt of the invoice. The undisputed portion shall be paid when due, and finance charges on any unpaid portion shall accrue, from the date due until the date of payment, to the extent that such amounts are finally determined to be payable to Company.
- G. **Remedies upon Payment Default.** Upon Customer's default of this Purchase Agreement, Company may, in addition to any other rights or remedies it may have at law or otherwise, subject to any cure rights of Customer, declare the entire balance of Customer's account immediately due and payable or foreclose any security interest in the goods delivered. If any unpaid balance is referred for collection, Customer agrees to pay Company, to the extent permitted by law, reasonable attorneys' fees in addition to all damages otherwise available, whether or not litigation is commenced or prosecuted to final judgment, play any court costs or expenses incurred by Company, and any finance charges accrued on any unpaid balance owed by Customer.

4. Warranties/Limitation of Liability

- A. **Warranty.** Subject to all exclusions set forth therein, the EVSEs are covered by the terms of the EVSEs' manufacturer's warranty (the "Warranty"), the material terms of which, such as whether the Warranty is parts-only and the term of such Warranty, may be summarized in the Quote for your convenience.
- B. **Maintenance.** Customer acknowledges and agrees that in order to obtain other maintenance services for the EVSEs, Company must enter into a maintenance agreement directly from Company (i) in the form of Exhibit D or (ii) on a time and material basis.
- C. **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 4, COMPANY MAKES NO WARRANTY WITH RESPECT TO THE PERFORMANCE OF THE PURCHASED GOODS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. COMPANY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT OF THIRD-PARTY RIGHTS BY THE PURCHASED GOODS, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF PURCHASED GOODS.
- D. **Limitation of Liability.**
 - i. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS PURCHASE AGREEMENT, EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL COMPANY BE LIABLE TO COMPANY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THIS PURCHASE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREUNDER, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

ii. CUSTOMER'S SOLE REMEDY FOR ANY BREACH BY COMPANY OF ITS OBLIGATIONS OR WARRANTIES UNDER THIS PURCHASE AGREEMENT SHALL BE LIMITED TO, AT COMPANY'S OPTION, REPAIR OR REPLACEMENT OF THOSE PURCHASED GOODS TO WHICH SUCH BREACH IS APPLICABLE OR REFUND BY COMPANY OF ALL OR A PART OF THE PURCHASE PRICE OF THE NON-CONFORMING PURCHASED GOODS.

E. **Exclusive Remedies.** THE REMEDIES CONTAINED IN THIS SECTION 4 ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND ARE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES COMPANY MAY HAVE AGAINST COMPANY WITH RESPECT TO NON-CONFORMANCE OF THE PURCHASED GOODS.

5. Intellectual Property

A. **Restrictions on Use.** Customer shall not: (i) create derivative works based on the Purchased Goods; (ii) copy, frame or mirror any part or content of the Purchased Goods; (iii) reverse engineer any Purchased Goods; or (iv) access the Purchased Goods 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" of the Purchased Goods.

B. **Ownership of Intellectual Property.** All right, title and interest in and to any intellectual property related in any way to the Purchased Goods is, and shall remain, the exclusive property of Company or the applicable PURCHASED GOODS manufacturer. For these purposes, the term "intellectual property" shall mean, all of a party's patents, patent applications, patent rights, copyrights, moral rights, algorithms, devices, application programming interfaces, databases, data collections, diagrams, inventions, methods and processes (whether or not patentable), know-how, trade secrets, trademarks, service marks and other brand identifiers, network configurations and architectures, proprietary information, protocols, schematics, specifications, software (in any form, including source code and executable code), techniques, interfaces, URLs, web sites, works of authorship, and all other forms of technology, in each case whether or not registered with a governmental entity or embodied in any tangible form and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world in any way arising prior to or during the term of this Purchase Agreement.

6. **Miscellaneous.** If any provision of this Purchase Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Purchase Agreement will otherwise remain in full force and effect and enforceable. This Purchase Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Purchase Agreement without consent. This Purchase Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Purchase Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Purchase Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. Any disagreements shall be settled by arbitration in accordance with the rules of JAMS, Inc. In any action or proceeding to enforce rights under this Purchase Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Purchase Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Purchase Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions.

EXHIBIT D

Maintenance of EVSEs

This Maintenance Agreement (“Maintenance Agreement”) governs any Customer purchase of maintenance set forth on the Sales Order and Quote. In the event the Customer has not purchased any maintenance for its EVSEs, this Maintenance Agreement is not applicable.

1. **Term of Maintenance.** This Maintenance Agreement shall be in effect until the Term Expiration indicated on the Sales Order (the “Initial Term”) and shall be automatically renewed for additional periods of the same duration as the Initial Term (collectively, the “Term”), unless either party requests termination at least thirty (30) days prior to the end of the then-current term.
2. **Maintenance.** Maintenance requests may be initiated at the following number: (888) 780-0062.
 - a. **Preventative Maintenance.** During the Term, routine maintenance shall be provided by Company according to the EVSEs manufacturers’ instructions.
 - b. **Corrective Maintenance.** For Customer maintenance requests that occur within the Term, Company shall schedule the requested maintenance within three (3) business days of its receipt of any necessary replacement parts from the EVSE manufacturer.
 - c. **Event-Driven Maintenance.** Any maintenance that is required due to vandalism, theft, or any damage that is caused by Customer or a third-party (“Event-Driven Maintenance”) shall be the financial responsibility of the Customer. Customer is encouraged to maintain appropriate levels of insurance on the EVSEs. Should Customer not authorize Company to perform Event-Driven Maintenance, Company’s responsibility for maintaining the operation of the EVSEs (including the EV Cloud Subscription Services) shall terminate until such time as Customer authorizes the Event-Driven Maintenance. For the purpose of clarity, Customers shall bear all financial responsibility that is connected with any Event-Driven Maintenance requests or requirements. Event-Driven Maintenance shall be scheduled within three (3) business days of Company’s receipt of the necessary replacement parts from the manufacturer.
 - d. **Maintenance Exclusions.** This Maintenance Agreement does not apply to defects resulting from alteration or modification by Customer, improper storage or operation by Customer, failure to maintain by Customer, vandalism, abuse, unauthorized relocation of EVSEs, installation of unauthorized software or firmware, driver misuse or damage, and events due to force majeure.
3. **Access to Premises; Indemnification.**
 - a. **Access.** Customer acknowledge and agrees that Company or Company’s agents may need to access the Customer’s premises to perform requested maintenance.
 - b. **Company Indemnification.** Company shall defend, indemnify and hold Customer, corporate affiliates, and their respective officers, directors, agents and employees harmless from damage, liability and expenses, including, but not limited, to reasonable attorneys’ fees, resulting from the negligent acts or willful misconduct of Company’s agents and employees, or anyone directly or indirectly employed or controlled by it, committed while performing the Maintenance on Customer’s premises, to the extent that they are the direct cause of the loss, damage or injury to third parties or property (e.g., equipment dislodging and striking a third party due to improper installation), as opposed to being caused by an occurrence or the consequences therefrom that the maintenance was intended to deter, detect, or avert. The indemnification as provided in this paragraph shall be subject to a monetary limitation of the amount of the Fees and Customer and Company both acknowledge that the monetary limitation referenced above bears a reasonable, commercial relationship to this Agreement. This provision shall survive termination or expiration of the Agreement.
 - c. **Customer Indemnification.** Customer shall indemnify, defend, and hold harmless Company and its representatives, agents, members, and employees from and against all claims, damages, losses, and expenses, including but not

limited to attorneys' fees to the extent such claims, damages, losses and expenses are caused by the negligence or willful misconduct of Customer. This provision shall survive termination or expiration of the Agreement.

4. **Miscellaneous.** If any provision of this Maintenance Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Maintenance Agreement will otherwise remain in full force and effect and enforceable. This Maintenance Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Maintenance Agreement without consent. This Maintenance Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Maintenance Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Maintenance Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. Any disagreements shall be settled by arbitration in accordance with the rules of JAMS, Inc. In any action or proceeding to enforce rights under this Maintenance Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Maintenance Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Maintenance Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions.

EXHIBIT E

Installation Agreement

This Installation Agreement (“Installation Agreement”) governs any Customer purchase of installation services set forth on the Sales Order and Quote. In the event the Customer has not purchased any installation services for EVSEs, this Installation Agreement is not applicable.

1. Installation

a. **Installation Services.** The Company shall provide “Installation,” including any removal requested, of certain EVSEs to the Customer in a professional and timely manner. Upon completion, Company shall remove all its waste materials, tools, construction equipment, machinery and surplus Equipment from and around the Customer property.

b. **Equipment.** Customer shall be responsible for securing the EVSEs identified in the applicable Quote.

c. **Inspections and Acceptance.** Upon completion, the Installation will be immediately inspected by the person designated by the Customer to supervise the project. Any objections to Installation performed shall be given in writing to Company within two (2) business days (“Inspection Period”). Acceptance of Installation shall not be unreasonably withheld.

d. **Payments.** If no objections are made within the Inspection Period, then payment of the Fee shall be tendered to Company and Company shall promptly execute and submit any documentation reasonably requested by Customer, such as any forms or permits that may be required under law. If objections are timely made, Company shall have a reasonable time to cure.

2. Termination. If Customer fails to remit any due payment, Company, at its sole discretion and in addition to any other remedy available to it by law and/or by equity, may discontinue Installation and recover damages to which Company is entitled including unpaid Fees, the value of the Installation performed and all amounts which would have become due to Company under this Agreement for the remainder of the Installation. Customer hereby agrees that Company shall have the right to immediately collect all unpaid Fees along with all costs and expenses incurred by Company in connection with such collection, including reasonable legal fees. This Installation Agreement shall automatically expire upon (i) Customer’s acceptance of the Installation or (ii) expiration of the Inspection Period, where Customer has waived its right to object.

3. Force Majeure. Any interruption of Installation directly or indirectly caused by a change in or enactment of any law by any governmental agency or body which make the subject matter of this Agreement illegal, national emergencies, insurrections, riots, embargoes, wars, terrorist acts or strikes, lockouts, work stoppages or other labor difficulties, power failure, worldwide shortage of any necessary component or material relating to the rendering of the Installation, floods, storms, earthquakes, power failure, internet service failure or unavailability of telephone service, acts of God, or for any other cause beyond the reasonable control of Company shall create no liability on the part of Company. Company shall not be required provide Installation required hereunder for Customer while interruption of Installation due to any such cause continues. The parties agree that in the event such interruption of Installation for the causes anticipated above continues for a period of sixty (60) days or more, either party shall have the right to cancel this Agreement by written notice, and in no event shall the Customer be required to pay, or the Company be entitled to collect, any payment for the period of such interruption of Installation. This Agreement, or any part thereof, may be immediately suspended or canceled, at the option of either Company or Customer, if (i) Company’s premises are destroyed by fire or other catastrophe and it is impractical to continue Installation or (ii) a material portion of the Company’s premises are destroyed by fire or other catastrophe and it is impractical to continue Installation.

4. Limited Liability. THE COMPANY SHALL NOT BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE INCLUDING (WITHOUT LIMITATION TO THE FOREGOING) ECONOMIC LOSS, LOSS OF PROFITS, BUSINESS OPERATING TIME OR USE, HOWSOEVER ARISING. IN NO EVENT SHALL THE COMPANY LIABILITY EXCEED THE FEES PAID TO THE COMPANY.

5. Indemnification

a. Company shall defend, indemnify and hold Customer, corporate affiliates, and their respective officers, directors, agents and employees harmless from damage, liability and expenses, including, but not limited, to reasonable attorneys’ fees, resulting from the negligent acts or willful misconduct of Company’s agents and employees, or anyone directly or indirectly employed or controlled by it, committed while performing the Installation on Customer’s premises, to the extent that they are the direct cause of the loss, damage or injury to third parties or property (e.g., equipment dislodging and striking a third party due to improper installation), as opposed to being caused by an occurrence or the consequences therefrom that the Installations were intended to deter, detect, or avert. The indemnification as provided in this paragraph shall be subject to a monetary limitation of the amount of the Fees and Customer and Company both acknowledge that the monetary limitation referenced above bears a reasonable, commercial relationship to this Agreement. This provision shall survive termination or expiration of the Agreement.

b. Customer shall indemnify, defend, and hold harmless Company and its representatives, agents, members, and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees to the extent such claims, damages, losses and expenses are caused by the negligence or willful misconduct of Customer. This provision shall survive termination or expiration of the Agreement.

c. Customer hereby acknowledges and agrees that Company is in no way responsible and/or liable for third party equipment and services, including without limitation, the internet and electrical, upon which the Installation relies.

6. Miscellaneous. If any provision of this Installation Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Installation Agreement will otherwise remain in full force and effect and enforceable. This Installation Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Installation Agreement without consent. This Installation Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Installation Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Installation Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. Any disagreements shall be settled by arbitration in accordance with the rules of JAMS, Inc. In any action or proceeding to enforce rights under this Installation Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Installation Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Installation Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions.