



State of Oklahoma

Office of Management and Enterprise Services

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**ADDENDUM 1 TO  
STATE OF OKLAHOMA CONTRACT WITH NATIONAL CAR CHARGING LLC  
RESULTING FROM STATE WIDE CONTRACT No. 0036**

This Addendum 1 ("Addendum") is an Amendment to the Contract awarded to National Car Charging LLC in connection with Solicitation 0900000328 ("Solicitation") and is effective November 30, 2019.

December 9

**Recitals**

Whereas, the State issued a Solicitation for proposals to provide products and/or services related to electric vehicle supply equipment (EVSE), as more particularly described in the Solicitation;

Whereas, National Car Charging LLC ("National Car Charging") submitted a proposal which contained an exception to the Solicitation terms and various other Contract Documents; and

Whereas, the State and National Car Charging have negotiated the final terms under which National Car Charging will perform the Services under the Contract.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

**1. Addendum Purpose.**

This Addendum memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to National Car Charging as of even date with execution of this Addendum. The parties agree that Supplier has not yet begun performance of work contemplated by the Solicitation.

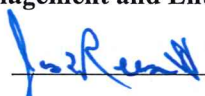
**2. Negotiated Documents of the Contract.**

2.1. The parties have negotiated certain terms of the Contract as follows:


- i. revisions to National Car Charging's Terms and Conditions for Charging Station and Software Purchases as contained in Attachment A to this Addendum titled, "Terms and Conditions for Charging Station and Software Purchases";

- ii. negotiated exceptions and additional terms to the Solicitation as contained in Attachment B to this Addendum titled, "Negotiated Exceptions and Additional Terms."
  - iii. revisions to National Car Charging's subcontractor EV Connect Terms and Conditions Master Service Subscription Agreement as contained in Attachment C to this Addendum titled, "Terms and Conditions";
- 2.2. Accordingly, any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.
- 2.3. National Car Charging affirmatively acknowledges that it will not ask the State or any agency to execute additional documents not listed above in connection with this Contract.

**State of Oklahoma by and through the Office  
of Management and Enterprise Services**

By:   
Name: James L. Reese, II  
Title: Chief Information Officer  
Date: 12-9-2019

**National Car Charging LLC**

By:   
Name: James Burness  
Title: CEO  
Date: Nov. 30, 2019

**Attachment A to  
Addendum 1 to  
STATE OF OKLAHOMA CONTRACT WITH NATIONAL CAR CHARGING LLC  
RESULTING FROM STATE WIDE CONTRACT No. 0036**

The **Terms and Conditions for Charging Station and Software Purchase** is hereby amended as set forth below and supersedes all prior documents submitted by **National Car Charging LLC** or discussed by the parties.

**National Car Charging LLC  
Terms and Conditions for Charging Station and Software Purchases**

This Terms and Conditions for Charging Station and Software Purchases (hereafter "**Terms and Conditions**") is a Contract Document by and between National Car Charging LLC ("**Vendor**") and State of Oklahoma by and through the Office of Management and Enterprise Services ("**State**," collectively the "**Parties**") for the benefit of State and Interlocal Entities ("**Customer**").

- 1) All invoices are to be paid Net 45 days upon receipt of a proper invoice. In the event of a delinquent payment by the Customer, the Customer will be assessed an interest rate of 1.15% per annum or the applicable state law prescribed interest rate, whichever is lower.
- 2) Invoice payment terms are based on acceptance date, not installation date.
- 3) Orders paid for in full prior to shipping receive a 2% discount.
- 4) Sealed box returns are subject to a 20% restocking fee and open box returns, if still in "new" condition, are subject to a 50% restocking fees. No returns of items not in "new" condition. However, no restocking fee shall apply to returned items that are opened for inspection and determined to be damaged.
- 5) Prices do not include installation unless specifically identified. Optional installation services may be offered by a third party and construction contracts would be made between the Customer and the installer directly.
- 6) Customer is responsible for ensuring adequate cellular service for networked units.
- 7) All shipping, unless otherwise agreed to by the Parties in writing, shall be FOB Destination. Customer has the right to make their own shipping arrangements.
- 8) National Car Charging LLC may resell networking plans required to operate managed (a.k.a. "smart") charging stations, however it is not a party to any software Master Services and Subscription Agreement (MSSA) that must be signed between the networking Vendor and the Customer. Any required changes

to an MSSA must be negotiated with the networking Vendor and not with National Car Charging LLC.

- 9) Customers may choose to change to any compatible OCPP v1.5 networking Vendor at any time. Compatibility is determined between the hardware manufacturer and the various networking Vendors.

10)Limitation of Liability:

Notwithstanding anything to the contrary in this Contract, nothing herein shall limit damages, expenses, costs, actions, claims, and liabilities arising from or related to property damage, bodily injury, or death caused by the Vendor; the Vendor's indemnity obligations under this Contract; Vendor's confidentiality obligations under this Contract; the bad faith, gross negligence or intentional misconduct of the Vendor or its employees, agents and subcontractors; or other acts for which applicable law does not allow exemption from liability.

11)Force Majeure:

Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. In the event that a party's performance of its obligations is materially hindered as a result of a force majeure event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the force majeure event and steps it is taking, and plans to take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable. Subject to the conditions set forth above, such non-performance shall not be deemed a default. However, a Customer may terminate a purchase order if Vendor cannot cause delivery of Products or Services in a timely manner to meet the business needs of the Customer.

12)Indemnification:

If a third party claims that any portion of the Products or services provided by Vendor under the terms of this Contract infringes that party's patent or copyright, the Vendor shall defend the State against the claim at the Vendor's expense and pay all related costs, damages, and attorneys' fees incurred by, or assessed to, the State, provided the State (i) promptly notifies the Vendor in writing of the claim and (ii) to the extent authorized by the Attorney General of the State, allows the Vendor to control the defense and any related settlement negotiations. If the Attorney General of the State does not authorize sole control of the defense and settlement negotiations to Vendor, Vendor shall be granted authorization to equally participate in any proceeding related to this section but Vendor shall remain responsible to indemnify the State for all associated costs, damages and fees incurred by or assessed to the State.

13)Confidentiality:

All data supplied by or on behalf of Customer in connection with the Customer's use of the products or services set forth in this Agreement shall be defined as "Customer Data." By virtue of this Agreement, Vendor may be exposed to or be provided Customer Data. Vendor shall not store or take Customer Data off Customer's premise. The Customer will be responsible for the accuracy and completeness of all Customer Data provided to Vendor or that Vendor may have access to. The Customer shall retain exclusive ownership of all Customer Data and such Customer Data shall be deemed to be the Customer's Confidential Information. Vendor shall restrict access to Customer Data to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein). Vendor will protect the Customer Data from unauthorized dissemination and use with the same degree of care that is uses to protect its own confidential information. Vendor shall immediately notify the Customer upon receipt of any request which in any way might reasonably require access to Customer Data. Vendor shall notify the Customer at the contact set forth herein by the fastest means available and also in writing. In no event shall Vendor provide such notification more than 24 hours after Vendor receives the request. Vendor shall not respond to subpoenas, service or process, FOIA requests and other legal requests related to Customer without first notifying the Customer and obtaining the Customer's prior approval of Vendor proposed responses. Vendor agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.

**ATTACHMENT B TO  
ADDENDUM 1 TO  
STATE OF OKLAHOMA CONTRACT WITH NATIONAL CAR CHARGING LLC  
RESULTING FROM STATE WIDE CONTRACT No. 0036**

**Negotiated Exceptions and Additional Terms**

The Solicitation is hereby amended to include the terms as set forth below and supersedes all prior Exceptions submitted by **National Car Charging LLC** or discussed by the parties.

**Solicitation, Section A General Provisions, Subsection A.20 is hereby deleted in its entirety and replaced with the following:**

The Supplier shall maintain and promptly provide proof to the State of the following insurance coverage, and any renewals, additions or changes thereto, as long as the Supplier has any obligation under a Contract Document:

- a) Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
- b) Commercial General Liability Insurance on a per occurrence basis with limits of liability not less than \$1,000,000 per occurrence and aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage;
- c) Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence combined single limit including bodily injury and property damage and with coverage, if applicable, for all owned vehicles, all non-owned vehicles, and all hired vehicles; and
- e) Additional coverage required by the State in writing in connection with a particular Acquisition.

**Solicitation, Section B Special Provisions, Subsection B.2.3. is hereby added:**

Per Solicitation, Section B Special Provisions, Subsection B.2 the State approves Supplier's use of the following as a subcontractor(s) under this Contract: EV Connect, Wells Industrial Battery, and EV Box. Without waiving the order of precedence herein, the state accepts the terms and conditions of this approved subcontractor to the extent the terms and conditions do not reduce any rights or enlarge any obligations of the State or authorized users as set forth in the Solicitation. In the event of a conflict between the Solicitation and terms and conditions of the subcontractor listed above or any properly approved subcontractors in the future, the Solicitation shall control. The order of precedent shall be the Solicitation, National Car Charging's negotiated documents contained herein, and then the terms and conditions of the subcontractor.



**Attachment C to  
Addendum 1 to  
STATE OF OKLAHOMA CONTRACT WITH NATIONAL CAR CHARGING LLC  
RESULTING FROM STATE WIDE CONTRACT No. 0036**

The Master Services and Subscription Agreement is hereby amended as set forth below and supersedes all prior subcontractor documents of **EV Connect, Inc.** as being resold through National Car Charing, or discussed by the parties.

This Master Services and Subscription Agreement is a Contract Document in connection with Oklahoma State wide Contract No. 0036 ("Contract") between the State of Oklahoma by and through the Office of Management and Enterprise Services ("State") and EV Connect, Inc. ("Contractor").

These terms will govern the purchase and use of the products and/or services related to electric vehicle supply equipment (EVSE) and cloud services provided by EV Connect and are between EV Connect and any State Entity or Affiliate, as defined in the Contract that wishes to sign a Sales Order, and become a EV Connect "Customer" (as defined in the Sales Order), for any of those certain subscription services, EVSE equipment purchases, installation and removal services, and/or maintenance services according to the Pricing Proposal. The Pricing Proposal shall be re-submitted to the State of Oklahoma on an annual basis prior to Contract renewal. In the event The State of Oklahoma rejects the new Pricing Proposal, State Entities and/or Affiliates shall not submit any additional Sales Orders after the Contract Term ends.

Should a State Entity or Affiliate wish to purchase any of the contemplated services, such State Entity or Affiliate shall be asked to finalize and sign the following form of Sales Order, which shall render the State Entity or Affiliate a Customer and contains and incorporates the Master Services and Subscription Agreement and the applicable attachments thereto:

State of Oklahoma by and through the Office  
of Management and Enterprise Services

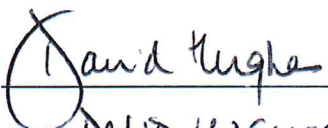
By: 

Name: James L. Reese, II

Title: Chief Information Officer

Date: 12-9-2019

EV Connect, Inc.

By: 

Name: DAVID HOGNES

Title: VP

Date: 11/11/2019

# SALES ORDER

<b>Customer:</b>	<b>Contact:</b>
<b>Address:</b>	<b>Phone:</b>
	<b>E-Mail:</b>

<b>Optional Subscription Services</b>			
<b>Optional Subscription Services</b>	<b>"Initial Service Term"</b>	<b>One Time Fee</b>	<b>"Transaction Fees"</b>
"EV Cloud Subscription Service"	One year	\$ .	Greater of \$0.50 or 15% of Base Session Fees

<b>Optional Products &amp; Services</b>		
<b>Optional Products</b>	<b>"Initial Deposit"</b>	<b>"Final Payment"</b>
Electric Vehicle Supply Equipment ("EVSE") (and any "Additional Products" included in the Quote, if applicable)	n/a	\$ .

<b>Optional Services</b>	<b>"Term Expiration"</b>	<b>One Time Fees</b>	<b>Annual Fee</b>
"Installation" (and removal if applicable)	Upon completion & acceptance	\$ .	N/A
"Maintenance"	1 year anniversary	On a per order basis, per the Pricing Proposal	N/A

As used in each of the Installation Agreement and Maintenance Agreement (Exhibits D and E of the Master Services and Subscription Agreement), "Fees" refer to the applicable one-time fee(s) and annual fees set forth above.

## MASTER SERVICES AND SUBSCRIPTION AGREEMENT

This Master Services and Subscription Agreement ("MSSA") is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "MSSA Effective Date") between EV Connect, Inc. ("Contractor"), and the Customer listed above ("Customer"). The MSSA includes and incorporates (i) the above Sales Order, which defines certain material terms utilized in the Terms and Conditions and its Exhibits, and (ii) the Terms and Conditions and Exhibits A, B, C, D and/or E, thereto, to the extent each is applicable, as well as the Solicitation and EV Connect's response. For the purpose of clarification, the Terms and Conditions and Exhibits A and B shall be applicable when the above Sales Order indicates a One Time Fee for a one year subscription for the EV Cloud Subscription Service. The One Time Fee will represent the sum of all licenses set forth in the Quote. Exhibits C, D and/or E shall be applicable when the above Sales Order indicates Initial Deposit, Final Payment and/or One Time Fees for such optional products and services elected by the Customer. In the event of a conflict between the Quote,



Sales Order or Terms and Conditions, the Sales Order, first, and the Quote, second, shall control.

**EV Connect, Inc.**

**Customer:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



**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, Contractor 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, Contractor 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 Contractor 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-party; interfere with or disrupt the integrity of the EV Cloud Subscription Service; or remove any proprietary notices or labels. Contractor 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 in compliance with these Terms and Conditions policies 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. Although Contractor has no obligation to monitor Customer's use of the EV Cloud Subscription Service, Contractor may do so upon reasonable belief and may prohibit any use of the EV Cloud Subscription Service it reasonably 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 (i) By virtue of the Agreement, Customer may be exposed to or be provided with certain confidential and proprietary information of the Contractor. Contractor shall clearly mark any such information as confidential. ("Confidential Information"). Customer is a state agency and subject to the Oklahoma Open Records Act and Contractor acknowledges information marked Confidential Information will be disclosed to the extent permitted under Customer's Open Records Act and in accordance with this section. Customer agrees to use the same degree of care that each such party uses to protect its own confidential information, but in no event less than a reasonable amount of care. Customer will not use Contractor's Confidential Information for purposes other than those necessary to directly further the purposes of the Contract.

(ii) All data supplied by or on behalf of Customer in connection with the Customer's use of the products or services set forth in this Contract shall be defined as "Customer Data." By virtue of this Agreement, Contractor may be exposed to or be provided Customer Data. Contractor shall not store or take Customer Data off Customer's premise. The Customer will be responsible for the accuracy and completeness of all Customer Data provided to Contractor or that Contractor may have access to. The Customer shall retain exclusive ownership of all Customer Data and such Customer Data shall be deemed to be the Customer's Confidential Information. Contractor shall restrict access to Customer Data to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein). Contractor will protect the Customer Data from unauthorized dissemination and use with the same degree of care that is uses to protect its own confidential information. Contractor shall immediately notify the Customer upon receipt of any request which in any way might reasonably require access to Customer Data. Contractor shall notify the Customer at the contract set forth herein by the fastest means available and also in writing. In no event shall Contractor provide such notification more than 24 hours after Contractor receives the request. Contractor shall not respond to subpoenas, service or process, FOIA requests and other legal requests related to Customer without first notifying the Customer and obtaining the Customer's prior approval of Contractor's proposed responses. Contractor agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.

3.2 Customer shall own all right, title and interest in and to the Customer Data. Contractor 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, Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor (as such terms are defined in Sections 4.7 and 4.8).

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

4.3 If Customer believes that Contractor has billed Customer incorrectly, Customer must contact Contractor 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 Contractor'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 Contractor to Customer on or by the forty-fifth (45<sup>th</sup>) 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, Contractor shall be entitled to the Net Deficit, on a quarterly basis, which, unless the Contractor has agreed to a Set-Off, shall be payable by Customer to Contractor on or by the thirtieth (30<sup>th</sup>) day following Contractor'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), Contractor may require Customer to provide authorization for Contractor to automatically debit a bank account or charge a credit card for such Net Deficits fees.

4.6 Contractor may choose to bill through an invoice, in which case, full payment for invoices issued are due net forty-five (45) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.15% per annum or applicable state prescribed interest rate on any outstanding balance, whichever is lower.

4.7 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").

4.8 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 Contractor hereunder.

4.9 Contractor may immediately deactivate the EV Cloud Subscription Service in the event full payment for invoices issued have not been received by Contractor within sixty (60) days after the mailing date of the invoice. Customer may reactivate the EV Cloud Subscription Service upon payment of all outstanding invoices.

4.10 In addition to the Transaction Fees, where allowed by law, Contractor 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.

4.11 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 (collectively, the "Term").

5.2 Customer may terminate this Agreement in the event Contractor (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 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.

5.3 Contractor 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.

5.4 Where this Agreement is terminated for any reason other than those contemplated under Sections 5.2 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) for products accepted and services rendered. In the event of termination before the natural end of the Initial Term or an additional Term, Customer shall receive a pro-rated refund of any and all prepaid fees for good and services, however this shall not include prepaid fees for subscription services.

5.5 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**

Contractor 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 Contractor or by third-party providers, or because of other causes beyond Contractor's reasonable control, including but not limited to cellular, data network or equipment failures, but Contractor shall provide advance notice in writing of any scheduled service disruption. HOWEVER, CONTRACTOR 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, CONTRACTOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **7. INDEMNITY**

Contractor shall indemnify and hold the State of Oklahoma and Customers, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees harmless from any and all liability to third parties, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses that a court finally awards or that are included in a settlement approved in writing by Contractor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in 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 control or participate in the defense and settlement. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN OKLAHOMA STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. The foregoing obligations do not apply with respect to portions or components of the Service (i) not supplied by Company, (ii) that are modified after delivery by Company and infringement or injury results solely from such modifications, (iii) combined with other products, processes or materials where the alleged infringement relates to such combination, (iv) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (v) where Customer's use of the Service is not strictly in accordance with this Agreement and said use is basis of liability to a third party. 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 Contractor to be infringing, Contractor shall, at its 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**

NEITHER PARTY OR ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR FORCE MAJEURE EVENTS OR (D) FOR ANY AMOUNTS, THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAYABLE BY CUSTOMER FOR THE ONE YEAR TERM OF THIS AGREEMENT, IN EACH CASE, WHETHER OR NOT CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS CONTRACT, THE FOREGOING PROVISIONS OF THIS SECTION SHALL NOT APPLY TO OR LIMIT DAMAGES, EXPENSES, COSTS, ACTIONS, CLAIMS AND LIABILITIES ARISING FROM OR RELATED TO BODILY INJURY, PROPERTY DAMAGE, OR DEATH CAUSED BY CONTRACTOR; THE CONTRACTOR'S INDEMNITY OBLIGATIONS UNDER THIS CONTRACT; CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS UNDER THIS CONTRACT; THE BAD FAITH, GROSS NEGLIGENCE, OR INTENTIONAL MISCONDUCT OF THE CONTRACTOR OR ITS EMPLOYEES, AGENTS, AND SUBCONTRACTORS; OR OTHER ACTS FOR WHICH APPLICABLE LAW DOES NOT ALLOW EXEMPTION FROM LIABILITY.

## **9. FORCE MAJEURE**

Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including 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, or labor disputes, worldwide shortage of any necessary component or material relating to the rendering of the Installation, floods, storms, earthquakes, internet service failure or unavailability of telephone service only as a result of general and widespread internet or telecommunications failures that are not limited to Contractor's systems, acts of God, or for any other cause beyond the reasonable control of either party provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable. Subject to the conditions set forth above, such non-performance shall not be deemed a default. However, a Customer may terminate the Agreement if Contractor cannot cause delivery of Products or Services in a timely manner to meet the business needs of the Customer.

#### **10. 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, which shall not be unreasonably withheld. Contractor's obligations under a Contract Document may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld in its sole discretion. Notwithstanding the foregoing, assignment of the Contract or rights under the Contract to successor by merger or consolidation is not considered an assignment for purposes of this provision. Business and daily functions of Contractor may be completed by a person or entity other than the Contractor, provided however, those business and daily functions do not include a key business function that is EV Connect's obligation under the contract. Ownership or Products purchased under the terms of this Contract and rights granted under the terms of this Contract may be assigned or transferred subject to notice and limitations and scope of use set forth in the Contract, at no additional cost, to other entities within the State.

This Agreement, coupled with the Solicitation, EV Connect's response, and all other applicable agreements incorporated by the MSSA, 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 the State and the Contractor, 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 Contractor in any respect whatsoever. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; 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 Oklahoma without regard to its conflict of laws provisions. The parties hereby consent to the exclusive personal jurisdiction and venue in Oklahoma County, Oklahoma.

#### **11. NOTICES**

EV Connect shall deliver any notice required under this Agreement to the Customer via personal delivery, registered or certified mail, postage prepared or next business day if sent by commercial overnight delivery service to the following addresses:

Chief Information Officer  
3115 N. Lincoln Blvd  
Oklahoma City, OK 73105

With a copy, which does not constitute notice, to:  
Information Services Deputy General Counsel  
3115 N. Lincoln Blvd.  
Oklahoma City, OK 73105

For immediate notice which does not constitute written notice:  
OMES Help Desk  
405-521-2444  
helpdesk@omes.ok.gov  
Attn: Chief Information Security Officer

Except for billing disputes the Customer shall deliver any notice to EV Connect by e-mail to [finance@evconnect.com](mailto:finance@evconnect.com), or by delivering it to EV Connect, Inc., 615 N Nash Street, Ste 203, EL Segundo, CA 90245. Either party may update its contact information for notices by delivering written notice of the new contact information to the other party.

## **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 Contractor's control ("permitted downtime"), Contractor 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 Contractor's entire liability, in connection with the EV Cloud Subscription Service availability shall be termination of the Agreement.

## **EXHIBIT B**

### **Support Terms**

Contractor 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.

Contractor 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.** Contractor 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, Contractor may process an order for substitute Purchased Goods upon Customer’s written consent.
- C. **Right to Delay Orders.** Contractor may withhold shipments to and delay installation for Customer if Customer has (i) failed to provide any required payments, including invoiced payments due, or (ii) is otherwise in violation of this Purchase Agreement.

#### **2. Delivery**

- A. **Shipping Date.** Upon confirmation from the Purchased Goods manufacturer, Contractor 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 Destination. 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 Contractor 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 Contractor with a written rejection (detailing any defects) within five (5) 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, Contractor 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.** Upon submission of an accurate and proper invoice, the invoice shall be paid in arrears after products have been delivered and accepted or services provided and in accordance with applicable law, net 45 (forty-five) days. Customer has ten (10) business day after delivery to reject products before products are deemed accepted. In the event of a delinquent payment by the Customer, the Customer will be assessed an interest rate of 1.15% per annum or applicable state prescribed interest rate, whichever is lower.
- C. **No Right of Return.** All sales are final and Customer shall have no right of return following Customer’s acceptance.
- D. **Payment in Dollars.** Customer shall remit payment to Contractor, at Customer’s option: (i) via wire or ACH transfer to an account designated by Contractor in writing from time-to-time; (ii) by check drawn on a registered and certified bank or financial institution, made out to “EV Connect, Inc”; or (iii) purchase cards including but not limited to VISA and MasterCard.

- E. **Disputes.** In the event Customer disputes any portion or all of an invoice, it shall notify Contractor 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 to the extent that such amounts are finally determined to be payable to Contractor.
- F. **Remedies upon Payment Default.** Upon Customer's default of this Purchase Agreement, Contractor 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.

#### 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, Customer must enter into a maintenance agreement directly from Contractor (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, CONTRACTOR MAKES NO WARRANTY WITH RESPECT TO THE PERFORMANCE OF THE PURCHASED GOODS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE. CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, , MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF PURCHASED GOODS.

#### D. Limitation of Liability as Applied Exclusively to the Purchase Agreement.

- i. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS PURCHASE AGREEMENT, EXCEPT FOR BODILY INJURY, PROPERTY DAMAGE, OR DEATH CAUSED BY CONTRACTOR; THE CONTRACTOR'S INDEMNITY OBLIGATIONS UNDER THIS CONTRACT; CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS UNDER THIS CONTRACT; THE BAD FAITH, GROSS NEGLIGENCE, OR INTENTIONAL MISCONDUCT OF THE CONTRACTOR OR ITS EMPLOYEES, AGENTS, AND SUBCONTRACTORS; OR OTHER ACTS FOR WHICH APPLICABLE LAW DOES NOT ALLOW EXEMPTION FROM LIABILITY, IN NO EVENT SHALL CONTRACTOR BE LIABLE TO CUSTOMER 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 CONTRACTOR OF ITS OBLIGATIONS OR WARRANTIES UNDER THIS PURCHASE AGREEMENT SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF THOSE PURCHASED GOODS TO WHICH SUCH BREACH IS APPLICABLE OR REFUND BY CONTRACTOR 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 UNDER THIS PURCHASE AGREEMENT AND ARE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST CONTRACTOR 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 Contractor 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. Contractor’s obligations under a Contract Document may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld in its sole discretion. Notwithstanding the foregoing, assignment of the Contract or rights under the Contract to successor by merger or consolidation is not considered an assignment for purposes of this provision. Business and daily functions of Contractor may be completed by a person or entity other than the Contractor, provided however, those business and daily functions do not include a key business function that is EV Connect’s obligation under the contract. Ownership or Products purchased under the terms of this Contract and rights granted under the terms of this Contract may be assigned or transferred subject to notice and limitations and scope of use set forth in the Contract, at no additional cost, to other entities within the State. This Purchase Agreement, coupled with the Solicitation, EV Connect’s response, and all other applicable agreements incorporated by the MSSA 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 the State and the Contractor, 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 Contractor in any respect whatsoever. All notices under this Purchase Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; 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 Oklahoma without regard to its conflict of laws provisions. The parties hereby consent to the exclusive personal jurisdiction and venue in Oklahoma County, Oklahoma.

## **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”).
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 Contractor according to the EVSEs manufacturers’ instructions, during normal business hours, and with advanced notice to the Customer. See Attachment 1 for additional details.
  - b. **Corrective Maintenance for EVSEs under Warranty.** During the Term, corrective maintenance shall be provided according to the EVSE’s warranty. For Customer maintenance requests that occur within the Term, Contractor shall schedule the requested maintenance within three (3) business days of its receipt of any necessary replacement parts from the EVSE manufacturer.
  - c. **Corrective Maintenance for EVSEs not under Warranty.** During the Term, corrective maintenance for EVSEs no longer covered by manufacturer warranty (“Non-Warranty Corrective 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 Contractor to perform Non-Warranty Corrective Maintenance, Contractor’s responsibility for maintaining the operation of the EVSEs (including the EV Cloud Subscription Services) shall be suspended until such time as Customer authorizes the Non-Warranty Corrective Maintenance. In the event of such occurrence, Customer shall not be responsible for payments during such period of suspension. For the purpose of clarity, Customer shall bear all financial responsibility that is connected with any Non-Warranty Corrective Maintenance requests or requirements. For Customer Non-Warranty Corrective Maintenance requests that occur within the Term, Contractor shall schedule the requested maintenance within three (3) business days of its receipt of any necessary replacement parts from the EVSE manufacturer.
  - d. **Event-Driven Maintenance.** Any maintenance that is required due to vandalism, theft, or any damage that is caused by Customer or a third-party not at the direction of EV Connect (“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 Contractor to perform Event-Driven Maintenance, Contractor’s responsibility for maintaining the operation of the EVSEs (including the EV Cloud Subscription Services) shall be suspended until such time as Customer authorizes the Event-Driven Maintenance. In the event of such occurrence, Customer shall not be responsible for payments during such period of suspension. For the purpose of clarity, Customer 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 Contractor’s receipt of the necessary replacement parts from the manufacturer.
  - e. **Maintenance Exclusions.** This Maintenance Agreement does not apply to defects resulting from alteration or modification by Customer performed without direction from EV Connect, improper storage or operation by Customer performed without direction from EV Connect, 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. **Fees.** Customer shall remit payment for any Non-Warranty Corrective Maintenance and Event-Driven Maintenance Fees set forth on the Sales Order within forty-five (45) days of receipt of an invoice for such maintenance services.
4. **Access to Premises; Indemnification.**

- a. **Access.** Customer acknowledge and agrees that Contractor or Contractor's agents may need to access the Customer's premises to perform requested maintenance. Such access shall be granted upon reasonable advanced notice and during normal business hours.
  - b. **Contractor Indemnification.** Contractor shall defend, indemnify and hold the State, 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 Contractor'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 Contractor 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.
5. **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. Contractor's obligations under a Contract Document may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld in its sole discretion. Notwithstanding the foregoing, assignment of the Contract or rights under the Contract to successor by merger or consolidation is not considered an assignment for purposes of this provision. Business and daily functions of Contractor may be completed by a person or entity other than the Contractor, provided however, those business and daily functions do not include a key business function that is EV Connect's obligation under the contract. Ownership or Products purchased under the terms of this Contract and rights granted under the terms of this Contract may be assigned or transferred subject to notice and limitations and scope of use set forth in the Contract, at no additional cost, to other entities within the State. This Maintenance Agreement, coupled with the Solicitation, and all other applicable agreements incorporated by the MSSA, EV Connect's response, 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 Contractor in any respect whatsoever. All notices under this Maintenance Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; 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 Oklahoma without regard to its conflict of laws provisions. The parties hereby consent to the exclusive personal jurisdiction and venue in Oklahoma County, Oklahoma.

**ATTACHMENT 1 TO**

**EXHIBIT D**

**PREVENTATIVE MAINTANENCE**

Labor and expenses required to repair, replace, document, clean, or adjust. These activities are intended to extend equipment life and assure proper operating condition and efficiency. Typical activities include:

- Clean EVSE system and signage.
- Prepare a standard “Condition Report” for each site visit and issue to Owner’s representative within 21 days of site visit.
- If repair or replacement work effort is necessary as found during any Contractor testing or inspection, Contractor will “red tag” the failed unit and replace or repair said unit.

## **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 Contractor shall provide “Installation,” including any removal requested, of certain EVSEs to the Customer in a professional and timely manner. Upon completion, Contractor 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 Contractor 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, and upon submission of an accurate and proper invoice, the invoice for the Fees set forth on the Sales Order shall be paid by Customer net 45 (forty-five) days. Contractor 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, Contractor shall have 30 (thirty) days to cure.

**2. Termination.** If Customer fails to remit any due payment, Contractor, 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 Contractor is entitled including unpaid Fees, the value of the Installation performed and all amounts which would have become due to Contractor under this Agreement for the remainder of the Installation. 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.** Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including 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, or labor disputes, worldwide shortage of any necessary component or material relating to the rendering of the Installation, floods, storms, earthquakes, internet service failure or unavailability of telephone service only as a result of general and widespread internet or telecommunications failures that are not limited to Contractor’s systems, acts of God, or for any other cause beyond the reasonable control of either party provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party’s control to ensure continued performance and to shorten duration of the event. 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.** EXCEPT FOR BODILY INJURY, PROPERTY DAMAGE, OR DEATH CAUSED BY CONTRACTOR; THE CONTRACTOR’S INDEMNITY OBLIGATIONS UNDER THIS CONTRACT; CONTRACTOR’S CONFIDENTIALITY OBLIGATIONS UNDER THIS CONTRACT; THE BAD FAITH, GROSS NEGLIGENCE, OR INTENTIONAL MISCONDUCT OF THE CONTRACTOR OR ITS EMPLOYEES, AGENTS, AND SUBCONTRACTORS; OR OTHER ACTS FOR WHICH APPLICABLE LAW DOES NOT ALLOW EXEMPTION FROM LIABILITY; THE CONTRACTOR 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 CONTRACTOR LIABILITY EXCEED THE FEES PAYABLE TO THE CONTRACTOR ARISING UNDER THIS INSTALLATION AGREEMENT.

#### **5. Indemnification**

a. Contractor shall indemnify and hold the State of Oklahoma and Customers, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees harmless from any and all liability to third parties, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses that a court finally awards or that are included in a settlement approved in writing



by Contractor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of Installation on Customer's premises, to the extent that they are the 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 DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN OKLAHOMA STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

b. 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. Contractor's obligations under a Contract Document may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld in its sole discretion. Notwithstanding the foregoing, assignment of the Contract or rights under the Contract to successor by merger or consolidation is not considered an assignment for purposes of this provision. Business and daily functions of Contractor may be completed by a person or entity other than the Contractor, provided however, those business and daily functions do not include a key business function that is EV Connect's obligation under the contract. Ownership or Products purchased under the terms of this Contract and rights granted under the terms of this Contract may be assigned or transferred subject to notice and limitations and scope of use set forth in the Contract, at no additional cost, to other entities within the State. This Installation Agreement, coupled with the Solicitation, EV Connect's response, and all other applicable agreements incorporated by the MSSA 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 Contractor in any respect whatsoever. 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, 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 Oklahoma without regard to its conflict of laws provisions. The parties hereby consent to the exclusive personal jurisdiction and venue in Oklahoma County, Oklahoma.