

DRAFT

ELECTRIC VEHICLE CHARGING SERVICES AGREEMENT (BY DEED)

BETWEEN:

THE DISTRICT COUNCIL OF LOXTON WAIKERIE

and

MY EV AUSTRALIA PTY LTD (ACN: 675 011 140)

Kelley Jones

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THIS AGREEMENT is made the _____ day of _____ 2025

BETWEEN

DISTRICT COUNCIL OF LOXTON WAIKERIE ABN: 42 047 987 821 of 35 Bookpurnong Terrace, Loxton SA 5333 ("the **Council**")

AND

MY EV AUSTRALIA PTY LTD ACN: 675 011 140 of Lot 41 Sturt Highway, PARINGA SA 5340 ("the **Provider**")

Together, ("the **Parties**")

BACKGROUND

- A. The Council has the care, control and management of the land contained within Crown Record 6305/209 located at Bookpurnong Terrace, Loxton, ("the **Land**"), which includes the Loxton Sporting Precinct carpark ("the **Site**").
- B. The Council is a council constituted under the *Local Government Act 1999*.
- C. The Provider operates an electric vehicle charging business.
- D. The Council and the Provider agree to enter into an agreement for the Services on the terms of this Agreement.
- E. More specifically, the Services are the provision of a 120kW Electric Vehicle Charger ("**EVC**") to be constructed and operated by the Provider on the Land in circumstances where the Provider is responsible for the installation, operation, maintenance, network integration, software management, billing, and customer service requirements associated with the EVC, but excluding any third party advertising or marketing activities.
- F. The Provider agrees to install, operate and maintain the EVC on the terms and conditions set out in this Agreement.
- G. The Council grants to the Provider the right to install, operate and maintain the EVC at the Site in accordance with the terms and conditions of this Agreement.

THE PARTIES AGREE as follows:

PART 1 – PRELIMINARY**1. Definition and Interpretation**

- 1.1. **Agreement** means this Electric Vehicle Charging Services Agreement;

- 1.2. **Approvals** means all approvals for the design, installation, removal and maintenance of the Improvements to be supplied, installed and maintained under this Agreement, including;
- 1.3. all necessary planning and building approvals, consents, licences or other approvals required by the Council acting as a regulatory authority or Government authorities; and
- 1.4. any approval required from electricity authorities for the connection of electricity to the Electric Vehicle Chargers.
- 1.5. **Business day** means a day that is not a Saturday, Sunday or public holiday in South Australia within the meaning of the *Public Holidays Act 2023*;
- 1.6. **Chief Executive Officer** means the person appointed as the Chief Executive Officer of the Council and includes any person acting in that position;
- 1.7. **Commencement Date** means the date that this Agreement is executed by both parties;
- 1.8. **Confidential Information** means the following information:
- 1.9. in relation to a party's business, operations or strategies;
- 1.10. in relation to the terms of this Agreement or its Schedules; or
- 1.11. acquired by the other party solely by virtue of provisions of this Agreement or through any tendering process,
and includes documentation and Reports, where that information is:
- 1.12. designated as confidential by a party;
- 1.13. that is by its nature confidential; or
- 1.14. known or ought to be known by the party receiving the information, that it is confidential, but not including information that:
- 1.15. is in the public domain, unless it came into the public domain by a breach of confidentiality;
- 1.16. is already known by the other party at the time this Agreement is entered into (but was not subject to obligations of confidence when it became known); or
- 1.17. is obtained lawfully from a third party not subject to any obligation of confidentiality;
- 1.18. **Council Representative** means the individual administering this Agreement for the Council and at the Commencement Date is the person named in Item 1 of the Schedule;
- 1.19. **Default Rate** means a rate of two per centum (2%) per annum greater than the published annual rate of interest charged from time to time by the Local Government Finance Authority on overdraft facilities of more than \$100,000.00 and if there is more than one rate published the higher of those rates;

- 1.20. **Electric Vehicle Charger** or **EVC** means the equipment and infrastructure installed on the Site used to supply electrical power to vehicles, and includes all ancillary components or equipment used in the charging of vehicles (whether or not they are located on the Site);
- 1.21. **Expiry Date** means 1 November 2025
- 1.22. **Force Majeure** means an unforeseeable and unknown event occurring after the Commencement Date which is beyond the reasonable control of the relevant party and the effect of which the relevant party could not take reasonable measures to prevent or mitigate. Such circumstances include:
- 1.23. acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- 1.24. acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution;
- 1.25. any measures that are introduced, escalated or implemented by any Governmental Agency to address the impact of the COVID-19 pandemic, to the extent that such measures preclude a party from performing any obligation under this Agreement;
- 1.26. an epidemic or pandemic is declared by a Governmental Agency after the Commencement Date and measures are implemented by the Governmental Agency to address the epidemic or pandemic; and/or
- 1.27. in respect of an obligation, any change in Legislation that makes a party's compliance with that obligation unlawful,
- but does not include any event or circumstance which a party ought to have reasonably foreseen.
- 1.28. **GST, taxable supply** and **tax invoice** have their meaning in *A New Tax System (Goods and Services Tax) Act 1999*;
- 1.29. **Improvements** means any alterations, additions or improvements to a Site made by the Provider during the Term, including (but not limited to) the installation of an EVC, whether or not such improvements have been approved by the Council under this Agreement;
- 1.30. **Provider** means the entity described as the Provider above and includes any agent of the Provider not limited to but including Y.E.S. GROUP (SA) PTY LTD (ACN: 627 710 954);
- 1.31. **Provider Representative** means the individual administering this Agreement for the Provider and at the Commencement Date is the person named in **Item 2** in the Schedule;
- 1.32. **Rates and Taxes** means all present and future rates, charges, levies, assessments, duty and charges of any Statutory Authority, other department or authority having the power to raise or levy any such amounts in respect of the operation of the EVC;
- 1.33. **Renewal Term** has the same meaning as in clause 5.1;

- 1.34. **Revenue Sharing Arrangement** means the method by which the parties will distribute the revenue derived from the operation of the EVC at the Site;
- 1.35. **Security Interests** means any mortgage, pledge, lien, charge or other security or arrangement which gives a creditor a preferential right to an asset or its proceeds and includes a security interest as defined in the *Personal Property Securities Act 2009* (Cth).
- 1.36. **Site** means that portion of the Land on which the EVC will be installed and operated being the area shown on the plan in **Annexure A**;
- 1.37. **Services** are as described in background paragraph E above and include (without limitation) the installation and ongoing management of the EVC but do not include third party advertising or marketing activities;
- 1.38. **Subcontractor** means at any time a contractor engaged by the Provider to provide any of the Services and includes a contractor of such a contractor;
- 1.39. **Term** means a period of fifteen (15) years commencing on the Commencement Date and expiring at midnight on the Expiry Date unless the Agreement is renewed in accordance with clause 5, in which case the Term expires on the completion of the Renewal Term; and
- 1.40. **Users** mean persons to whom electricity is supplied from the Electric Vehicle Charger.

2. Interpretation

In this Agreement and unless the contrary intention appears:

- 2.1. headings are for convenience only and do not affect interpretation;
- 2.2. the singular includes the plural and vice-versa and words importing a gender include any gender;
- 2.3. a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government body or authority and vice versa;
- 2.4. a reference to any party in this Agreement, or any other document or arrangement referred to in this Agreement, includes that party's executors, administrators, substitutes, successors and assigns;
- 2.5. a reference to any document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- 2.6. a reference to any statute or to any statutory provision include any statutory modification or re-enactment of it or any statutory provision substituted for it, and all by-laws, regulations;
- 2.7. "including" and similar expressions are not and must not be treated as words of limitation;
- 2.8. no rule of construction applies to the disadvantage of a party because that party put forward this Agreement or any portion of it; and

- 2.9. if the Provider comprises more than one person, a reference to the Provider means each of them jointly and severally.

3. Schedule and Annexures

The Schedules and Annexures form part of this Agreement.

4. Term

This Agreement is for the Term.

5. Renewal

- 5.1. The Provider may, in accordance with this clause 5 exercise a right to renew this Agreement for a period of five (5) years commencing from the day after the Expiry Date (**Renewal Term**).
- 5.2. If the Provider wishes to exercise any right of renewal described in clause 5.1, then the Provider must serve a written notice on the Council not less than three (3) months and not more than six (6) months prior to the Expiry Date stating its desire to renew this Agreement. If such notice is given then, subject to this clause 5, the Council will be obliged to renew this Agreement for the Renewal Term on the same terms and conditions as are contained in this Agreement except for the exclusion of this clause 5.
- 5.3. The Provider will not be entitled to a right of renewal pursuant to clause 5.1 if:
- 5.4. the Provider is in breach of a term of this Agreement before or at the time of giving notice of the Provider's desire to exercise the right of renewal; or
- 5.5. the Provider is in breach or commits any breach of a term of this Agreement after giving that notice but before the Expiry Date.

PART 2 – LICENCE

6. Grant of Licence for Site

- 6.1. The Council grants to the Provider a licence to access and occupy the Site to carry out the Services on the terms set out in this Agreement (the **Licence**).
- 6.2. The Licence is effective from the Commencement Date for the Term.
- 6.3. The Council may terminate the Licence without liability to the Provider by giving at least three (3) months' written notice to the Provider where the Council receives notice of resumption or acquisition of the Site or of any part of the land adjacent to the Site from or by any Statutory Authority.
- 6.4. The Council may terminate the Licence without liability to the Provider by giving three (3) months' written notice to the Provider (if practicable) if:
- 6.5. the Site is withdrawn from the Council's care control and management;
- 6.6. the purpose for which the Site has been dedicated is altered under section 18 of the *Crown Land Management Act 2009* and the use of the Site for the Services is inconsistent with or contrary to the purpose (as altered); or

- 6.7. the dedication attached to the Site is revoked under section 19 of the *Crown Land Management Act 2009* or other legislation.
- 6.8. Where the Licence is terminated under clause 6.3 or clause 6.4:
- 6.9. each party is released from further liability under this Agreement without any affect to a party's rights or liabilities for a prior breach; and
- 6.10. the Provider must comply with its obligations under clause 36 to remove the Improvements and restore the Site; and
- 6.11. the Council and the Provider may consult to identify a substitute Site for the possible relocation of the EVC.
- 6.12. For the avoidance of doubt, neither the Licence nor this Agreement in any way limits the Council's rights to access the Site.

PART 3: SUPPLY, INSTALLATION, MAINTENANCE & OPERATION

7. Liability for Rates and Taxes

The Provider must pay when due, or reimburse the Council upon demand, all Rates and Taxes levied, assessed or charged in respect of an EVC.

8. Power and Other Utilities

- 8.1. The Provider will be responsible for and will pay when due the full amount of all accounts, invoices, assessments and charges with regard to the consumption, use or supply of electricity, and any and all other services and utilities supplied to or used from a Site.
- 8.2. If a separate meter is not supplied for recording or measuring the services and utilities consumed on or from a Site, the Provider must (unless otherwise agreed by the Council), at its cost, arrange for the installation of a separate meter or meters, in consultation with the Council and maintain and carry out any necessary upgrades to the meter(s).

9. Alterations to the Site

- 9.1. The Provider may install an EVC on or make other Improvements to a Site in accordance with this clause 9.
- 9.2. In the case of the installation of an EVC, this must occur in the location identified in **Annexure B** and in accordance with the specifications set out in Annexure B.
- 9.3. The Provider must not carry out or undertake any Improvements (including making modifications to any Improvements) to a Site without the Council's prior written approval.
- 9.4. The Council is responsible for procuring, at its cost, development approval for the Improvements that are approved by the Council to be installed at the Site.

- 9.5. The Provider must carry out any Improvements approved by Council at its own cost and:
- 9.6. in a proper and workmanlike manner;
- 9.7. in accordance with reasonable conditions imposed by the Council (if any);
- 9.8. in accordance with all Legislation and the Approvals; and
- 9.9. in a way so as to minimise disturbance to others.
- 9.10. Any Improvements to the Site (including, for the avoidance of doubt, the EVC) will remain the property of the Provider during the Term and the Provider will be responsible for maintaining such Improvements in accordance with this Agreement.

10. Maintain, repair and replace

- 10.1. The Provider must, at all times during the Term and at its cost in all things, maintain, repair and replace (as applicable) the Improvements:
- 10.2. such that they are in good repair, condition and working order;
- 10.3. fit for purpose; and
- 10.4. in accordance with all Approvals (as applicable) and the maintenance requirements and service standards contained in **Annexure C**.
- 10.5. The Provider must ensure that the EVC on the Site are, at all times, capable of charging mainstream electric vehicles.
- 10.6. The Provider acknowledges and agrees that the Council has no obligation to maintain or repair the Improvements.

11. Notice of defect

The Provider must:

- 11.1. give the Council notice as soon as reasonably practicable of any circumstance or event on or in connection with the operation of an EVC at the Site of which the Provider is aware of that might cause danger, risk or hazard to any person; and
- 11.2. if required by the Council:
- 11.3. promptly rectify any defect or want of repair to make an EVC or the Site safe from any danger, risk or hazard, at the Provider's own cost to the extent that the Provider is responsible for the rectification or repair works under this Agreement; and
- 11.4. take reasonable steps to ensure that the Site is not accessible by any member of the public until the defect or want of repair has been rectified to the satisfaction of the Council.

12. Customer Service Requirements

- 12.1. The Provider must have a complaint handling process in place which addresses the manner in which it will respond to queries and complaints from members of the public
- 12.2. The Provider must maintain a website throughout the Term, the address of which must be displayed on or near the EVC on the Site to the Council's reasonable satisfaction, that includes:
- 12.3. the Provider's customer support procedure;
- 12.4. the fees and charges payable for charging services; and
- 12.5. the terms and conditions for use of the charging services.

13. Fee for Charging Services

- 13.1. The fee payable by Users for use of an EVC on the Site from time to time will be determined by the Provider in consultation with the Council but subject to clause 13.2.
- 13.2. The fee determined by the Provider under clause 13.1 may be subject to an increase only once annually during the Term. For the avoidance of doubt, the Provider must consult with the Council in relation to any proposed increase and can not be implemented unless the Council is satisfied (acting reasonably) that the increase is reasonable.

14. Reporting

- 14.1. The Provider must notify and provide reports to the Council (and to any third parties as required by law) in relation to any reported incidents and injuries suffered by a User or other person which arise in connection with the use of an EVC on the Site within 48 hours of the report occurring.
- 14.2. The Council must notify and provide reports to the Provider (and to any third parties as required by law) in relation to any incidents reported to it and injuries suffered by a User or other person on the Site affecting the Services (of which the Council has knowledge) within 48 hours of the incident being reported.
- 14.3. The Provider must provide reports to the Council's reasonable satisfaction on a monthly basis that address the use of the EVC, payments made by Users and operation costs. The parties agree that the Provider will satisfy its obligations under this clause 14.3 where it provides to the Council unrestricted access to the Provider's electronic records management system known as 'Charge Fox' (or any substitute system that may be approved by the Council).
- 14.4. The Provider must otherwise provide to the Council any information that the Council requests that is relevant to the provision of the Services within 48 hours of such request or within any timeframe otherwise agreed by the parties.

15. Signage

- 15.1. The Provider must, at its own cost, display on each EVC a telephone number to report any damage or any concerns about the Electric Vehicle Charger.
- 15.2. The Provider must not display any signage at a Site other than as permitted by this Agreement or as shown in any annexure to this Agreement without the prior approval of the Council.

PART 5 – INPUTS FROM THE PROVIDER**16. Resources generally**

- 16.1. The Provider is responsible for all costs associated with providing the Services, including but not limited to the payment of all services and utilities charges to or consumed by the EVC.
- 16.2. At all times, at its own cost and expense, the Provider must have available adequate resources to provide the Services in accordance with this Agreement.
- 16.3. The Provider undertakes to provide the Services with a proper level of skill and knowledge reasonably expected of a person competent in the relevant field of expertise for the provision of the Services.

17. Provider Warranties

The Provider warrants that:

- 17.1. it has full power and authority to enter into this Agreement and to complete all transactions contemplated by this Agreement;
- 17.2. it will at all times act in good faith;
- 17.3. it has taken and will use all reasonable endeavours to authorise the execution, delivery and performance of this Agreement.

18. Security Interests

The Provider must not grant a Security Interest or any other security of any kind over this Agreement or the Improvements without the Council's consent.

19. Provider's use of Subcontractors

The engagement of a Subcontractor by the Provider to provide the Services (or any part of them) does not relieve the Provider from any liability under this Agreement in respect of the performance of this Agreement and the Provider assumes all liability for any and all acts, errors, or failures to comply with this Agreement on behalf of the Provider by a Subcontractor.

20. Interest on Overdue Amounts

If the Provider does not pay an amount when it is due under this Agreement, the Provider must pay interest on that amount on demand from when the amount became due until it is paid in full. Interest is calculated daily on all outstanding balances at the Default Rate.

PART 6: INSURANCE, RISK & INDEMNITIES**21. Provider must insure**

- 21.1. The Provider must keep current during the Term, for the Site and the Improvements:
- 21.2. public liability insurance for the amount of twenty million dollars (\$20,000,000) for each claim;
- 21.3. all insurance in respect of the Improvements for their full replacement value; and
- 21.4. any other insurances required by law.
- 21.5. If by reason of the Provider's default or negligence, the Council claims under the Local Government Association Mutual Liability Scheme or under insurance held by the Council, the Provider must bear any excess or deductible incurred in respect of that claim unless the circumstances in relation to the claim are contributed to by an act or omission of the Council in which case the liability for the excess or deductible shall be apportioned between the parties.

22. Evidence of Insurance

On or before the Commencement Date, the Provider must provide to the Council copies of all certificates evidencing the currency of the policies that the Provider has taken out under clause 21, and during the Term the Provider must:

- 22.1. pay each premium before it is due for payment;
- 22.2. give the Council certificates of currency each year when the policies are renewed and at other times upon the Council's reasonable request but not more than once annually;
- 22.3. not allow any insurance policy to lapse as far as it applies to a Site; and
- 22.4. notify the Council immediately if a policy is cancelled or if an event occurs which could prejudice or give rise to a claim under a policy.

23. Notice

The Provider must notify the Council in writing as soon as practicable of the occurrence of an event that may give rise to a claim under a policy of insurance effected by the Provider and must ensure that the Council is kept fully informed of subsequent action and developments concerning the claim.

24. Indemnity

The Provider is liable for and indemnifies the Council against all actions, liabilities, penalties, claims or demands for any loss, damage, injury or death incurred or suffered directly in connection with:

- 24.1. any negligent, or unlawful act or omission by the Provider;
- 24.2. loss or damage to property or injury or death to any person caused by the Provider delivering the Services or the use of an EVC on the Site; or
- 24.3. a breach of this Agreement by the Provider,

except to the extent that they are caused by the Council's negligence.

25. Release

The Provider releases the Council from all actions, liabilities, penalties, claims or demands for any damage, loss, injury or death occurring in connection with the Provider delivering the Services except to the extent that they are caused by the Council's negligence.

26. Indemnities are independent

Each indemnity is independent from the Provider's other obligations and continues during this Agreement and after this Agreement ends. The Council may enforce an indemnity before incurring expense.

PART 7: TERMINATION & RIGHTS AND OBLIGATIONS ON EXPIRY

27. The Council may, on written notice to the Provider and while preserving to the Council any rights which may have accrued to the Council, immediately terminate this Agreement where the Provider:

- 27.1. commits a breach of a material term of this Agreement which is not capable of being remedied;
- 27.2. fails to remedy a breach of a material term of this Agreement that is capable of being remedied within a period stated by notice in writing from the Council (which period must be reasonable in the circumstances but shall not exceed 30 days or any other time frame agreed between the parties taking into consideration the nature of the breach);
- 27.3. becomes insolvent;
- 27.4. is wound up by resolution or an order of a Court; and
- 27.5. ceases to provide the Services for a continuous period of 5 business days.

28. The Provider may terminate the Agreement by provision of one month's notice in writing to the Council where:

- 28.1. the Site is damaged or destroyed such that it is wholly or substantially unfit for the Services to be carried out from it; or
- 28.2. Council commits a breach of a material obligation and has not remedied that breach within a reasonable period of notice from the Provider having regard to the nature of the breach; or
- 28.3. If the Licence is terminates by the Council under clause 6.

29. To avoid doubt, if the Provider terminates this Agreement acting under clause 28 then the Provider must comply with its obligations under clause 36 to restore the Site.

30. The expiry or termination (for any reason) of this Agreement does not extinguish or otherwise affect any rights of either party against the other which accrued prior to the time of termination or expiry, or otherwise relate to or arise from any breach or non-observance of obligations under this Agreement which arose prior to the time of termination or expiry.

31. The Provider acknowledges that the following obligations under this Agreement are material terms:
- 31.1. the obligation to pay fees and charges for utilities and other services to the Site;
 - 31.2. the obligations and prohibitions in relation to carrying out Improvements to a Site;
 - 31.3. the obligation to take out and maintain insurance;
 - 31.4. the obligations in relation to an assignment of this Agreement; and
 - 31.5. the obligation to comply with Annexure D.
32. If the Council does not act on or exercise any rights immediately or at all in respect of any breach of a material term, that conduct on the part of the Council is not and will not be deemed to amount to a waiver of the material nature of that material term.
33. If the Provider breaches any material term, that conduct on the part of the Provider will be deemed to constitute a repudiation of this Agreement and the Council may at any time thereafter rescind this Agreement by accepting that repudiation.
34. To avoid doubt, all licences operating in respect of a Site also terminate with immediate effect upon the termination of this Agreement.

35. Expiry

This Agreement will come to an end on the Expiry Date unless:

- 35.1. it is renewed in accordance with clause 5, in which case it will come to an end at the expiry of the Renewal Term; or
- 35.2. it is terminated earlier in accordance with any other provision of this Agreement, in which case it will come to an end when such earlier termination is affected.

36. Restoration of Site

- 36.1. When this Agreement comes to an end, including pursuant to clauses 27 or 28, the Provider must undertake the following works in respect of the Site within three (3) months' or within any other period agreed by the Council:
- 36.2. remove all of the Improvements and repair any damage caused by such removal unless it has otherwise been agreed between the parties (in writing) for any of the Improvements to remain on or around the Site; and
- 36.3. reinstate, to the Council's reasonable satisfaction, the Site to the condition it was immediately prior to the Improvements having been carried out, fair wear and tear excepted (or as may otherwise be agreed by the Council).
- 36.4. If the Provider fails to remove the Improvements and reinstate a Site as required by clause 36.1 the Council may remove the Improvements (and deal with them as it sees fit) and undertake the reinstatement works required to be undertaken by the Provider and recover the cost of such works from the Provider as a debt.

37. Survival of clauses

- 37.1. The following clauses survive the expiration or termination (for any reason) of this Agreement:
- 37.2. clause 9.10 (ownership of Improvements)
- 37.3. clause 16.3 (Provider warranties);
- 37.4. clause 21(Insurance)
- 37.5. Clauses 24 and 25 (Indemnity and release);
- 37.6. clause 36 (restoration of Site at end of Term);
- 37.7. clause 37 (Survival of clauses);
- 37.8. clauses 40 and 41 (Confidentiality and announcements); and
- 37.9. clause 49 (Dispute Resolution).

PART 8 – FUNCTIONARIES**38. Council Representative**

- 38.1. At all times, there must be a Council Representative. At any time the Chief Executive Officer may in writing given to the Provider, substitute another Council Representative.
- 38.2. The Council Representative has these functions:
- 38.3. to liaise with the Provider and the Provider Representative in the performance of this Agreement;
- 38.4. to give and receive notices and exercise powers for the Council under this Agreement; and
- 38.5. such other functions as may be stated in this Agreement.
- 38.6. The Provider may assume that a communication from the Council Representative is made with the knowledge and authority of the Council.

39. Provider Representative

- 39.1. At all times, there must be a Provider Representative. At any time, the Provider may in writing given to the Council, substitute another Provider Representative.
- 39.2. The Provider Representative has these functions:
- 39.3. the day-to-day performance by the Provider of this Agreement;
- 39.4. to liaise with the Council and the Council Representative in the performance of this Agreement;
- 39.5. to give and receive notices and exercise powers for the Provider under this Agreement; and

- 39.6. such other functions as may be stated in this Agreement.
- 39.7. The Council may assume that a communication from the Provider Representative is made with the knowledge and authority of the Provider.
- 39.8. The Provider Representative must be contactable by the Council by telephone 24/7:

PART 9: CONFIDENTIALITY AND ANNOUNCEMENTS

40. Confidential Information

A party must not disclose to any third party the Confidential Information of the other party unless the disclosure:

- 40.1. is necessary in connection with performing obligations under this Agreement or under another agreement between the parties;
- 40.2. is to a member of the Personnel of that party, to the extent that the member needs to know the Confidential Information in order to perform a function in connection with this Agreement;
- 40.3. in accordance with the *Freedom of Information Act 1991* (SA) or is otherwise required by law. If such a disclosure is required, the disclosing party must as soon as reasonably practicable notify the other party of that fact (the Council gives no assurance that this Agreement, or any document exchanged in the performance of this Agreement, would qualify as an exempt document under the *Freedom of Information Act 1991*);
- 40.4. is reasonably made to a professional legal adviser or professional auditor; or
- 40.5. is with made with the prior written consent of the other party. The consent may be subject to the condition that the person to whom the disclosure is to be made enter into a separate confidentiality agreement with the other party.

41. Announcements

The Provider must not, without the Council's consent (which may be withheld at the Council's absolute discretion) make any announcement or disclose to the media any information regarding this Agreement or work performed by the Provider under this Agreement.

PART 10 – PAYMENTS AND PROFIT SHARING

42. Revenue Sharing Arrangement

The Parties agree to fully comply with, and cooperate as necessary to give effect to, the Revenue Sharing Arrangement as set out in **Annexure D**.

43. GST

- 43.1. If the Provider is liable to pay GST in respect of a taxable supply it makes to the Council under this Agreement then (unless this Agreement expressly states the consideration includes GST) the consideration payable by the Council to the Provider for that taxable supply must be increased by an amount equal to that GST.

- 43.2. Any additional amount so payable must be paid at the same time as when the consideration for the relevant taxable supply is required to be paid by the Council, conditional upon the Provider first providing a tax invoice for that taxable supply to the Council.

44. Set off

At any time, the Council may (but is not obliged to), without notice to the Provider set-off any money payable or to become payable to the Provider under this Agreement against any debt or liability of the Provider to the Council under this Agreement or otherwise.

PART 11 – MISCELLANEOUS**45. Assignment**

- 45.1. The Provider must not assign the Provider's rights under this Agreement without the prior consent of the Council, which consent may be withheld in the Council's absolute discretion or granted subject to any conditions that the Council sees fit to impose.

46. Right to rectify

- 46.1. Subject to clause 46.2, the Council may at the Provider's cost do anything which the Provider should have done under this Agreement but which the Provider has not done provided that Council does not impede the Permitted Use.
- 46.2. Prior to undertaking any works as permitted by clause 46.1, the Council must first provide the Provider with a notice of defects or works required to be undertaken by the Provider, which notice must provide a reasonable period for the Provider to rectify the defects or undertake the required works.
- 46.3. The Provider must reimburse the Council for the reasonable costs and expenses incurred by the Council acting under clause 46.1.

47. Force majeure

- 47.1. A party is not liable for failure to perform this Agreement to the extent and for so long as its performance is prevented or delayed because of circumstances (a force majeure) outside the party's direct control and without fault or negligence by that party, but only if that party:
- 47.2. immediately notifies the other party, giving reasonable details;
- 47.3. does everything reasonable to remedy the cause quickly;
- 47.4. upon request by the other party, regularly provides further information of any progress in remedying the cause of the force majeure;
- 47.5. immediately notifies the other party when the cause of the force majeure no longer exists; and
- 47.6. immediately recommences its performance when the cause of the force majeure no longer exists.

48. Vicarious liability

As between these parties, the Provider is liable to the Council for anything done or not done by a Subcontractor that if done or not done by the Provider would breach this Agreement.

49. Dispute resolution

- 49.1. If any dispute or disagreement arises between the parties in connection with this Agreement, the parties undertake to use all reasonable endeavours, in good faith, to settle the dispute or disagreement by negotiation between the Council Representative and the Provider Representative.
- 49.2. A party claiming that a dispute has arisen under this Agreement must give written notice to the other party specifying the nature and details of the dispute.
- 49.3. If the parties are unable to resolve the dispute within ten (10) business days they must promptly refer the dispute:
- 49.4. in the case of the Provider, to a director of the Provider; and
- 49.5. in the case of the Council, to the Chief Executive Officer.
- 49.6. In the event that negotiations do not resolve the dispute within thirty (30) days then a mediator agreeable to both parties may be engaged to seek a resolution. If the parties cannot agree upon a mediator, the mediator will be appointed by the President or Acting President of the Law Society of South Australia. The cost of the mediator will be borne equally by both parties.
- 49.7. Nothing in this Agreement is intended to limit either party's right to seek a legal remedy for any dispute that arises.

50. Notices

- 50.1. To be effective, a notice under this Agreement must be in writing and given to a party either:
- 50.2. by sending the notice by registered post to the recipient's address now stated or as last notified - notice by post is given at the time at which the letter would be delivered in the ordinary course of post; or
- 50.3. by sending the notice by email to the recipient's email address now stated or as last notified - notice by email is taken to be given:
 - a) when the sender receives an automated message confirming delivery; or
 - b) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,whichever happens first; or
- 50.4. as permitted by a statute applicable to the recipient.

50.5. Despite the above, a notice in writing delivered personally to the Council Representative is notice to the Council and a notice in writing delivered personally to the Provider Representative is notice to the Provider.

51. Ombudsman Act

The *Ombudsman Act 1972* empowers the Ombudsman to investigate any “administrative act”, which expression includes an act done in the performance of functions conferred under a contract for services with the Council. The Provider agrees to comply with all their obligations as may arise under that Act in relation to this Agreement or the engagement.

52. ICAC Act

The Provider acknowledges and agrees that by entering into this Agreement the Provider will be considered a ‘public officer’ for the purposes of the *Independent Commissioner Against Corruption Act 2012* (“ICAC Act”) and is obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

53. Council as a regulator

The Council enters into this Agreement as a council acting under sections 7 and 36 of the *Local Government Act 1999* and not in any other capacity. This Agreement does not preclude, fetter or pre-empt the exercise by the Council of any other regulatory function or power.

54. Costs

A party bears its own costs of and incidental to the preparation, negotiation and execution of this Agreement.

55. Waivers and variation

A provision of, or a right, discretion or authority created under, this Agreement may not be:

- 55.1. waived except in writing signed by the parties granting the waiver; and
- 55.2. varied except in writing signed by the parties. A failure or delay in exercise, or partial exercise, of a power, right, authority, discretion or remedy arising from a breach of, or default under this Agreement does not result in a waiver of that right, power, authority, discretion or remedy.

56. Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

57. Severability

If a provision (including part of a provision) of this Agreement would, but for this clause 57, be unenforceable:

- 57.1. the provision must be read down to the extent necessary to avoid that result; and

- 57.2. if the provision cannot be read down to that extent, it must be severed and the remainder of this Agreement continues to bind the parties, unless this would materially change the intended effect of this Agreement.

58. Entire Agreement

This Agreement constitutes the entire agreement between the parties, which may be amended from time to time as agreed between the parties in writing.

59. Special Conditions

- 59.1. The Special Conditions set out in **Item 3** of the Schedule form part of this Agreement.
- 59.2. If there is an inconsistency between a Special Condition and any other provision of this Agreement, the Special Condition prevails to the extent of the inconsistency.

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SCHEDULE

Item 1	Council Representative	INSERT NAME INSERT POSITION Mobile INSERT Email <u>INSERT</u>
Item 2	Provider's Representative	INSERT NAME INSERT POSITION Mobile: INSERT Email <u>INSERT</u>
Item 3	Special Conditions	Nil

EXECUTION

THE COMMON SEAL of **THE DISTRICT COUNCIL OF LOTON WAIKERIE** was hereunto affixed in the presence of:

.....

Mayor

.....

Chief Executive Officer

Executed by the Provider in accordance with section 127(1) of the *Corporations Act 2001*:

.....

Signature of Director

.....

Signature of Director/Secretary

.....

Name of Director

.....

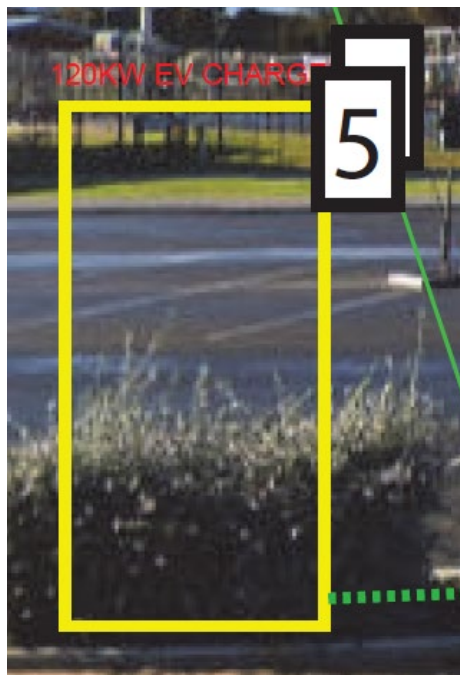
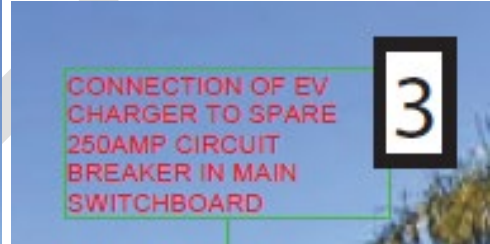
Name of Director/Secretary

ANNEXURE A – SITE PLAN

Insert aerial plan of site

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ANNEXURE B – LOCATION OF EVC & SPECIFICATIONS



Insert further descriptions relating to location and specifications as required

ANNEXURE C – MAINTENANCE REQUIREMENTS

1. The Provider must ensure that all Electric Vehicle Chargers and other Improvements are:
 - 1.1. kept clean and free of graffiti and for this purpose, ensure any graffiti is removed promptly upon the Provider being notified of its presence;
 - 1.2. inspected by the Provider regularly and at least twice annually; and
 - 1.3. otherwise maintained in accordance with the skill, diligence, prudence and practice that would be reasonably expected of a skilled and experienced Provider of electric vehicle charging services, including by periodically replacing or repairing worn components, including paintwork.
2. The Provider must ensure that any defects to Electric Vehicle Chargers and other Improvements are rectified as soon as reasonably practicable, including by rectifying defects caused by:
 - 2.1. vandalism;
 - 2.2. adverse weather conditions; and
 - 2.3. traffic accidents.
3. The Provider must remove all debris where an Electric Vehicle Charger or Additional Structure has been damaged, unless such damage is caused the Council's negligent, or unlawful act, default or omission.

ANNEXURE D – REVENUE SHARING ARRANGEMENT

1. Revenue derived from the use of the EVC on the Site will be split between the Parties at a percentage of 70% to the Provider and 30% to the Council (the **Council's Share**).
2. The Council will review and monitor revenue reports through its access to the electronic record management system known as Charge Fox (which access the Provider is required to provide pursuant to clause 14.3 of the Agreement) to ascertain the Council's Share and will invoice the Provider monthly for payment of the Council's Share.
3. The Provider must make payment of each invoice issued by the Council pursuant to paragraph 2 of this Annexure within twenty-one (21) days of the date of the invoice in the manner directed on the invoice.

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