

EnviroSpark Networks, LLC

EV CHARGING STATIONS INSTALLATION AND SERVICES AGREEMENT

Client: Name: _____ d/b/a: (if applicable) _____

Information: Organization type (e.g., corporation, LLC): _____ State of organization: _____

Contact: _____

Address: _____

Phone: _____

City: _____

Email: _____

State: _____

Zip: _____

Effective Date: _____ (the "Effective Date")

The Agreement (as defined below) is entered into by the parties for the purpose of installing on the premises of Client (as defined below) EV charging-station equipment to provide Client and its customers and business invitees with EV charging functionality at the premises identified in the applicable Equipment Installation Schedule in the form of the attached Exhibit B (each a "Site"). This signature page, together with the attached General Terms and Conditions (Exhibit A), each Equipment Installation Schedule substantially in the form of Exhibit B signed by both parties, and any other documents attached to this signature page or incorporated into the Agreement by reference or attachment (including any additional Equipment Installation Schedule(s)), comprise the agreement between EnviroSpark Networks, LLC ("EnviroSpark") and Client regarding its subject matter (the "Agreement"). (The person or entity identified as Client above is referred to in the Agreement as "Client.") Capitalized terms used on this signature page have the meanings ascribed to them in this signature page or elsewhere in the Agreement. To the extent there are any inconsistencies between the terms and conditions contained in Exhibit A of the Agreement and those of any of the other exhibits or other documents attached to or incorporated into the Agreement, the terms and conditions contained in Exhibit A of the Agreement shall control.

The Agreement will be in effect from the Effective Date and will remain in effect for the initial term identified below (the "Initial Term") and any succeeding renewal terms, unless earlier terminated in accordance with the Agreement.

Initial Term:	A period of ten (8) years from the Functionality Date (as defined in Exhibit A of the Agreement)
Installation/Services Fees:	[INSERT FEES AND FREQUENCY]

Each party has caused this signature page, and therefore the Agreement, to be executed by a duly authorized representative.

AGREED AND ACCEPTED:

EnviroSpark Networks, LLC
("ENVIROSPARK")

("CLIENT")

By: _____
(Authorized Signature)

Name: _____

Title: _____

By: _____
(Authorized Signature)

Name: _____

Title: _____

EXHIBIT A

GENERAL TERMS AND CONDITIONS

These General Terms and Conditions (“General Terms”) are attached to and incorporated into the EnviroSpark Networks, LLC (“EnviroSpark”) EV Charging Stations Installation and Services Agreement (the “Agreement”) between EnviroSpark and the Client identified on the signature page (“Client”). These General Terms shall apply to all services rendered and made available by EnviroSpark to Client pursuant to the Agreement (“Services”) and to all equipment installed by EnviroSpark at Client Site(s) pursuant to the Agreement (“Equipment”). EnviroSpark shall have no obligation to perform any work outside the scope of work expressly specified in an Equipment Installation Schedule or any work required as a result of unforeseen conditions or circumstances at a Site (such as, but way of example and not limitation, substantially increased costs associated with the work than anticipated by EnviroSpark). If unforeseen conditions or circumstances arise at a Site before EnviroSpark’s installation work at the Site has been completed and are determined by EnviroSpark in its sole discretion to make the installation and use of Equipment at such site not commercially feasible, EnviroSpark may terminate the applicable Equipment Installation Schedule upon notice to Client without liability of any kind based on such termination. Capitalized terms used but not otherwise defined in these General Terms shall have the meanings ascribed to them in the Agreement. EnviroSpark shall exercise commercially reasonable efforts to maintain the Equipment in good operating condition throughout the Term. Client acknowledges and agrees that it shall not be entitled to any share of any revenues received by EnviroSpark in respect of EnviroSpark’s use of the Site(s) (as defined below) or Equipment installed by EnviroSpark therein, and that EnviroSpark shall have sole control over amounts charged to Client customers, business invitees and other visitors to the applicable Site(s) for use of such EnviroSpark equipment.

1. Effective Date and Term. The Agreement will become effective as of the Effective Date set forth on the signature page when signed by duly authorized representatives of both parties and will continue in effect during the Initial Term set forth on the signature page, unless earlier terminated in accordance with the Agreement. For purposes of determining the Initial Term, the date on which EnviroSpark determines, in its reasonable discretion, that the Equipment is installed, energized with electric power and functional for purposes of use in accordance with the Agreement shall be the “Functionality Date”. Upon the expiration of the Initial Term, the Agreement will automatically renew for successive Renewal Terms, each of a duration equal to one year (1) (each, a “Renewal Term”). (The Initial Term and all Renewal Terms are collectively referred to as the “Term.”) The contract or agreement shall terminate absolutely and without further obligation on the part of the city at the close of the calendar year in which it was executed and at the close of each succeeding calendar year for which it may be renewed.

Notwithstanding the foregoing, the Agreement shall terminate absolutely and without further obligation on the part of the Client at the close of the initial term was executed and at the close of each succeeding calendar year for which it may be renewed. If the Client does not opt to renew the Agreement at the end of the term, the Agreement shall automatically terminate without any further obligation by the Client.

2. EnviroSpark Access to Client’s Site. Client shall grant, and hereby grants, to EnviroSpark under any executed Equipment Installation Schedule, a right of entry and access to the applicable Site at all hours and on all days for purposes of installing, maintaining and removing the Equipment, as applicable.

3. Tax Credits and Incentives. To the extent that the Services provided or the Equipment installation and use result in any credits, incentives, subsidies, rebates or other amounts payable or credited to Client (including, without limitation, carbon credits) (“Credits”), Client shall pay such amounts to EnviroSpark promptly after receipt or promptly cause the transfer of such Credits to EnviroSpark.

4. Warranties. Client represents, warrants and covenants to EnviroSpark that: (a) Client is the owner or rightful tenant of each Site and (if applicable to Client as tenant of a Site) has obtained from the owner of the Site all permissions and authority required to enable EnviroSpark’s access to the Site and installation of the Equipment as specified in the Agreement; (b) it has the right, power and authority to enter into the Agreement and it and its employees and subcontractors have the same to fully perform all of its obligations hereunder and that the execution of the Agreement has been duly authorized by all necessary corporate action; (c) it shall, except in the case of the occurrence of a force majeure event as described below, maintain throughout the Term at Client’s sole expense availability to EnviroSpark of electrical service and communications services (wireless, hardwired, or other) suitable to EnviroSpark’s needs for purposes of maintaining the Equipment and related communications for billing and reporting functionality (including, without limitation, such data communication lines as to enable EnviroSpark to obtain a reasonable cellular communications signal at the exterior of the Site for EnviroSpark’s data communication purposes; (d) Client shall not install or permit to be installed at each Site at any time during the Term any electric vehicle charging equipment similar in functionality to the Equipment; and (e) Client shall not at any time during the Term require any tenants of the Sites or business invitees to the Sites to pay charges of any kind for the privilege of using the Equipment. EnviroSpark represents and warrants that it is duly organized and validly existing under the laws of its state of incorporation or other formation. Client acknowledges and agrees that EnviroSpark is not responsible for availability of electrical service or availability of communications (wireless, hardwired, or otherwise), nor is EnviroSpark liable for any intrusions into the communications network, and that EnviroSpark does not warrant that the Client’s use of these services will be uninterrupted or free from error, or that it will meet the Client’s requirements. **THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES RELATED TO PERFORMANCE OF SERVICES UNDER THE AGREEMENT, WHETHER WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR INFRINGEMENT OR USAGE OF TRADE ARE HEREBY DISCLAIMED. THE REMEDIES STATED HEREIN (IF ANY) CONSTITUTE CLIENT’S EXCLUSIVE REMEDIES AND ENVIROSPARK’S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY.**

5. Indemnification. To the extent permitted by law, Client shall indemnify and hold harmless, and at EnviroSpark’s request defend, EnviroSpark, and its successors and assigns (and its and their officers, directors, employees, customers and agents) from and against any and all claims, losses, liabilities, damages, settlements, expenses and costs (including, without limitation, attorneys’ fees and court costs) that arise out of or relate to any third-party claim or threat thereof brought against EnviroSpark alleging bodily injury or property damage caused by the negligence or willful misconduct of Client. EnviroSpark shall indemnify and hold harmless, and at Client’s request defend, Client, and its successors and assigns (and its and their officers, directors, employees, customers and agents) from and against any and all claims, losses, liabilities, damages, settlements, expenses and costs (including, without limitation, attorneys’ fees and court costs) which arise out of or relate to any third-party claim or threat thereof brought against Client alleging bodily injury or property damage caused by the negligence or willful misconduct of EnviroSpark. Notwithstanding anything to the contrary in this Section, **municipal corporations shall not be liable for failure to perform or for errors in performing their legislative or judicial powers, and any indemnification obligation under this Section shall not apply to such failures or errors. For neglect to perform, or for the improper or unskillful performance of, their ministerial duties, municipal corporations shall be liable to the extent permitted by law.** The indemnifying party will: (a) promptly notify the indemnifying party in writing of the receipt of any claim that is covered by this Section 5; (b) give the indemnifying party all reasonably requested information that Client has concerning such claim; (c) give the indemnifying party sole authority to control the defense and settlement of any such claim; and (d) if applicable, reasonably cooperate with and assist the indemnifying party, at the indemnifying party’s request and expense, in the defense and settlement of the claim. The indemnified party’s failure to provide written notice of, or information concerning, or authority to control, or cooperation with respect to, any such claim will not relieve the indemnifying party from any liability under this Section 5 unless the indemnifying party’s defense is prejudiced by lack of, or late, notice.

6. Confidentiality. Client may have access to information that is treated as confidential and proprietary by EnviroSpark, including, without limitation, the existence and terms of the Agreement, trade secrets, technology, and information pertaining to business operations and strategies, customers, pricing, marketing, sourcing, personnel, and operations of EnviroSpark, its affiliates and its suppliers and customers, in spoken, written, printed, electronic, or in any other form or medium (collectively, the “Confidential Information”). Client shall: (a) treat all Confidential Information as strictly confidential; (b) not disclose Confidential Information or permit it to be disclosed, in whole or part, to any third party without the prior written consent of EnviroSpark in each instance, and (c) not use any Confidential Information for any purpose except as required to assist EnviroSpark in the performance of the Services. Client shall notify EnviroSpark immediately in the event Client becomes aware of any loss or disclosure of any Confidential Information.

7. LIMITATION OF LIABILITY. IN NO EVENT SHALL ENVIROSPARK'S AGGREGATE LIABILITY TO CLIENT FOR ALL CAUSES OF ACTION ARISING UNDER THE AGREEMENT, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITY AND NEGLIGENCE) EXCEED FIVE HUNDRED THOUSAND DOLLARS (\$500,000). IN NO EVENT SHALL ENVIROSPARK OR CLIENT HAVE ANY LIABILITY TO THE OTHER PARTY FOR LOST PROFITS OR LOST REVENUE, LOSS OF USE OR SIMILAR ECONOMIC LOSS, OR FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF THE AGREEMENT.

8. Compliance with Laws. EnviroSpark shall perform all of its obligations under the Agreement in compliance with all applicable federal laws and regulations of the United States, and in compliance with local construction permit requirements applicable to the Site. Client shall be responsible for identifying to EnviroSpark any other state, county, parish, municipal or other local ordinances, regulations, codes or permits required to be adhered to or obtained in the performance of the installation(s) pursuant to the Agreement (collectively, "Laws"). To the extent that compliance with any Laws identified by Client after EnviroSpark has submitted an Estimate to Client or the parties have entered into an Equipment Installation Schedule, the parties will negotiate in good faith and as promptly as practicable a change order specifying the revisions to the scope of work, price, payment and schedule required by such compliance.

9. No Waivers. No failure on the part of any party hereto to exercise, and no delay by any such party in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver or assent by any party hereto of any breach or default (in any term or condition of the Agreement) shall constitute a waiver of or an assent to any succeeding breach of or default in the same or any other term or condition hereof.

10. Severability. All rights and restrictions contained herein may be exercised and shall be applicable and binding only to the extent they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render the Agreement illegal, invalid or unenforceable. If any term of the Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining terms hereof shall constitute their agreement with respect to the subject matter hereof and all such remaining terms shall remain in full force and effect.

11. Termination. Either party may terminate the Agreement at any time during the Term based on the other party's material breach thereof if such breach remains uncured for thirty (30) days after receipt by the breaching party of written notice thereof. If, for any reason whatsoever, a Site should not receive (and continue to enjoy) approval for the installation and use of the Equipment, or other equipment and improvements from any required governing authority or regulatory agency, or sufficient electrical, telephone and other communication to the Site required for the use of the Equipment or deemed necessary by EnviroSpark, or if the Site is deemed by EnviroSpark to lack sufficient potential to attract electric vehicle owners to the Site, EnviroSpark shall have the option to terminate the applicable Equipment Installation Schedule forthwith without penalty, and remove all Equipment and improvements installed thereon. Client may terminate this Agreement at any time upon thirty (30) days' prior written notice for its convenience, without cause; provided, however, that within thirty (30) days after any such termination for Client's convenience, Client shall pay to EnviroSpark as liquidated damages (and not as a penalty, it being difficult to ascertain actual damages that would result from such termination) an amount equal to \$150.00 per plug, multiplied by the number of months then remaining in the Term. Upon the expiration or termination of the Agreement, Client shall permit EnviroSpark during normal business hours to gain access to the Site(s) on which the Equipment is located and to remove the EnviroSpark-installed Equipment.

12. Termination for Convenience. Client may terminate this Agreement at any time upon thirty (30) days' written notice for its convenience, without cause; provided, however, that within thirty (30) days after any such termination for Client's convenience, Client shall pay to EnviroSpark as liquidated damages (and not as a penalty, it being difficult to ascertain actual damages that would result from such termination) an amount equal to \$100.00 per plug, multiplied by the number of months then remaining in the Term.

13. Survival. Any section of the Agreement that is expressly stated to, or by its nature should, survive termination or expiration of the Agreement, will survive such termination or expiration.

14. Insurance. EnviroSpark and Client will each carry and maintain workers compensation insurance coverage as required by law and other liability insurance coverage as required to meet its indemnification obligations under the Agreement.

15. Notices. All notices and other communications required or contemplated hereunder shall be in writing and shall be deemed to have been duly given upon delivery in person or upon receipt, if mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties at the addresses appearing on the signature page.

16. Governing Law. The Agreement shall be governed by and construed in accordance with the laws of the State of Georgia. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement in whole or in part.

17. Assignment. Neither party shall assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, the Agreement or any of its rights or obligations under the Agreement. Any purported assignment, sale, transfer, delegation or other disposition, except as permitted herein, shall be null and void. Notwithstanding the foregoing, if a party is acquired by a third party as part of a merger, consolidation, corporate reorganization, sale of all or substantially all of its assets, sale of stock, change of name or like event, such party shall assign, sell, transfer, delegate or otherwise dispose of the Agreement and its rights and obligations hereunder to the acquiring entity, and such acquired party shall exercise best efforts to cause the acquiring entity to accept assignment and assumption of the Agreement in a signed writing; provided that in any case in which Client is the acquired party as described in the immediately preceding sentence, the failure of Client to obtain such assignment and assumption of the Agreement by the acquiring entity within thirty (30) days after the effectiveness of such acquisition shall be deemed to be a termination of the Agreement by Client for its convenience, and the liquidated damages specified in section 11 above shall be immediately due and payable by Client to EnviroSpark.

18. Successors. The Agreement shall be binding upon and inure to the benefit of its parties' hereto and their respective successors and assigns.

19. Headings. The headings as to the contents of the particular paragraphs are inserted only for convenience and shall not be construed as a part of the Agreement or as a limitation on the scope of any of the terms or provisions of the Agreement.

20. Relationship of Parties. EnviroSpark and Client are not principal and agent, employer and employee, partners or joint-venturers, and neither party has any authority to obligate or bind the other.

21. Force Majeure. Each party will be excused from a delay in performing, or a failure to perform, its obligations under the Agreement to the extent such delay or failure is caused by the occurrence of any contingency beyond the reasonable control, and without any fault, of such party, which contingencies include acts of God, war, riot, power failures, fires, and floods.

22. Counterparts; Facsimile, Electronic and Digital Signatures. The Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument and may be sufficiently evidenced by one counterpart. Each party may rely upon the facsimile signature of the other. In addition, at all times while the Agreement is in force, each party expressly agrees to the use and acceptance of signatures by digital and/or electronic means. In addition, each party expressly agrees (except with respect to documents required to be signed in the presence of a third party or documents having an additional qualifying requirement in addition to the signature) that the use of a message which represents the document and is transformed by a {02637252-1 }

digital signature, constitutes a sufficient signing of the record. Execution of the Agreement at different times and places by the parties shall not affect the validity hereof.

23. Conflict of Terms. These General Terms and the other terms and conditions of the Agreement supersede any terms or conditions forming a part of EnviroSpark's proposal or estimate or any terms or conditions that may be included on any purchase order or other standard form of document submitted by Client. Fulfillment of Client's purchase order for Services or Equipment does not constitute acceptance of any of Client's terms and conditions and does not serve to modify or amend the Agreement in any way.

24. Entire Agreement. The Agreement supersedes all prior discussions and agreements between parties with respect to the subject matter hereof, and the Agreement contains the sole and entire agreement between parties with respect to such subject matter. The Agreement shall not be modified or amended except by an instrument in writing signed by or on behalf of the parties hereto. Any terms or conditions forming a part of EnviroSpark's proposal or included on or contained in any purchase order or other standard form of document provided by Client are expressly rejected and shall be of no force or effect on the terms of the Agreement.

EXHIBIT B

FORM OF EQUIPMENT INSTALLATION SCHEDULE

This Equipment Installation Schedule is entered into by EnviroSpark Networks, LLC (“EnviroSpark”) and [Client full name] (“Client”), effective as of [Date] under and pursuant to the terms and conditions of that certain EV Charging Stations Installation and Services Agreement dated as of [Date] between EnviroSpark and Client (“Agreement”), the terms and conditions of which shall apply to this Equipment Installation Schedule as if fully set forth herein.

Site Location:

[Insert precise physical address of location of Site/installation]

Equipment List:

Description: Installing [x] chargers and infrastructure for [x] future chargers as depicted below.

[Insert applicable graphic depictions]

IN WITNESS WHEREOF, this Equipment Installation Schedule is executed by authorized representatives of the parties below.

CLIENT: _____

By: _____

Name: _____

Title: _____

ENVIROSPARK: EnviroSpark Networks, LLC

By: _____

Name: _____

Title: _____

