

EV Smart (UK) Limited Software Services Agreement

This service agreement (the "Agreement") is a legal agreement between you ("Customer" or "you" or "your") and EV Smart (UK) Limited ("EV Smart", "us", "we" or "our") for the provision of the EV Smart charging service (the "Services").

We allow you to use the Services on the basis of this Agreement. We do not sell the Services to you. We remain the owners of the Services at all times.

1. Interpretation

1.1. The definitions and rules of interpretation in this clause apply in this Agreement.

"Authorised Users" those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services.

"Business Day" a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"Car Park User" a person that uses a Charge Point to charge an electric vehicle.

"Change of Control" the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls, controlled and the expression change of control shall be construed accordingly.

"Charge Point" an electric vehicle charging point operated by the customer at the Installation Location, including for the avoidance of doubt, any additional or replacement charge points installed at the Installation location after the Effective Date.

"Charging Session" means the period of time during which a Charge Point is used by a Car Park User to charge an electric vehicle, such period being for a continuous period of time not less than two (2) minutes commencing when such Car Park User has accessed the Charge Point and ending when such Car Park User has terminated such access.

"Charging Session Fees" means the standard fees charged to the Car Park User for the Charging Session as set out in [the Order].

"Charges" means the Cloud Subscription Charges, and the EV Smart Revenue Share.

"Cloud Software Services" the EV Smart charging cloud subscription services provided by EV Smart to the Customer under this Agreement via [www.ev-smart.co.uk] or any other website notified to the Customer by EV Smart from time to time.

"Cloud Subscription Charges" has the meaning set out in clause 5.2.

"Confidential Information" information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 13.5 or clause 13.6.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures as defined in the Data Protection Legislation.

"Customer Data" the data inputted by the Customer, Authorised Users, or EV Smart on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

"Data Protection Legislation" the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); [and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party].

"Effective Date" the date on which We notify You that the Cloud Software Services will be available for use.

"Electricity Cost" has the meaning set out in clause 3.3.

"EV Smart App" EV Smart's mobile application software from time to time for Car Park Users to use the Charge Points.

"EV Smart Revenue Share" has the meaning set out in clause 3.1.2.

"Heightened Cybersecurity Requirements" any laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, (industry schemes) and sanctions, which are applicable to either the Customer or an Authorised User (but not the EV Smart) relating to security of network and information systems and security breach and incident reporting requirements, which may include the cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

"Order" the Customer's written acceptance of the Installation Proposal (as defined in EV Smart's Terms of Supply and Installation relating to the Charge Points).

"Initial Subscription Term" the initial term of this agreement being () months, or such other initial term as agreed between the parties in writing, but subject always to clause 16.2.

"Installation Location" means [redacted]

"Maintenance Charges" £30 per month or such other amount as may be notified to the Customer from time to time, to be paid to EV Smart by direct debit and any Additional Maintenance Charges.

"Maintenance Services" the maintenance services described in clause 4.

"Maintenance Services Policy" EV Smart's policy for providing maintenance of the Charge Points as made available at www.ev-smart.co.uk or such other website address as may be notified to the Customer from time to time.

"Net Session Fees" means the total amount of Charging Session Fees collected on behalf of the Customer by EV Smart, less the Electricity Cost.

"Normal Business Hours" 8.00 am to 6.00 pm local UK time, each Business Day.

"Renewal Period" the period described in clause 16.1.

"Revenue Management Services" the collection of revenue from Car Park users, as described in clause 3.

"Services" means the Cloud Software Services, and the Revenue Management Services.

"Software" the online software applications hosted by or on behalf of EV Smart, and to which EV Smart provides the Customer with access as part of the Services.

"Subscription Term" has the meaning given in clause 16.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).
[Support Services Policy] EV Smart's policy for providing support in relation to the Services as made available at www.ev-smart.co.uk or such other website address as may be notified to the Customer from time to time.]

"Support Services Policy" EV Smart's policy for providing support in relation to the Services as made available at www.ev-smart.co.uk or such other website address as may be notified to the Customer from time to time.

"UK Data Protection Legislation" all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

"Virus" any thing or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications services, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data; whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise; or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

"Vulnerability" a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

1.2. Clause and paragraph headings shall not affect the interpretation of this Agreement.
1.3. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality)
1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
1.7. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
1.8. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
1.9. A reference to writing or written includes e-mail.

2. The Services

2.1. From the Effective Date, and subject to you paying the Charges and complying with all of your other obligations in this Agreement, we will provide for the Subscription Term:
2.1.1. the Revenue Management Services; and
2.1.2. the Cloud Software Services.

3. Revenue Management Service

3.1. During the Subscription Term:
3.1.1. all revenue derived from the use of the Charging Points shall be collected from Car Park Users via the EV Smart App;
3.1.2. we shall be entitled to retain fifty percent (50%) of the Net Session Fees ("EV Smart Revenue Share");
3.2. After deducting the EV Smart Revenue Share, we shall remit the balance of the Charging Session Fees to you not more than thirty (30) days after the end of each calendar month to such account as you may nominate from time to time. Notwithstanding the foregoing, no such payment will be required if at the end of any calendar month the amount due to you hereunder is less than fifty pounds (£50), and payment of any such amount may be deferred until a subsequent month during the Subscription Term.
3.3. You shall provide to us [on the last day of every month], a complete and accurate statement of the charges made to you by your electricity supplier for the electricity used by the Charge Points (during that month) ("Electricity Cost").
3.4. You shall permit us or our designated auditor to audit any account information or documents relating to your electricity supply to the Charge Points in order to ensure compliance with clause 3.3.
3.5. You may only change the Charging Session Fees with our prior written consent.

4. Maintenance of the charge points

4.1. You shall:
4.1.1. have sole responsibility for the installation of the Charge Points;
4.1.2. ensure that each of the Charge Points is maintained in good working order throughout the Subscription Term, and is regularly serviced in accordance with its manufacturer's recommendations;
4.1.3. not install (or permit or suffer to be installed) on the Charge Points any software other than that which may be agreed in writing by Us;
4.1.4. permit and provide sufficient access (whether physical or remote) to the Charge Points to enable Us to install such software as We may require to provide the performance the Services and to provide updates and maintenance to such software;
4.1.5. not reduce the number of Charge Points at the Installation Location, or decommission or otherwise take out of use any of the Charge Points, without Our written agreement.

5. Cloud Software Services

5.1. From the Effective Date, we hereby grant to you a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Authorised Users to use the Cloud Software Services during the Subscription Term.
5.2. Any subscription fees to be charged in consideration of the Cloud Software Services will be set out in the [Order] (the "Cloud Subscription Charges").
5.3. In relation to the Authorised Users, you undertake that:
5.3.1. each Authorised User shall keep a secure password for his use of the Services, that such password shall be changed when prompted to do so by the system and that each Authorised User shall keep his password confidential;
5.3.2. you shall permit us or our designated auditor to audit the Services in order to establish the name and password of each Authorised User and to audit compliance with this Agreement. This right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with your normal conduct of business;
5.3.3. if any of the audits referred to in clause 5.3.2 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to our other rights, you shall promptly disable such passwords and we shall not issue any new passwords to any such individual; and
5.3.4. if any of the audits referred to in clause 5.3.2 reveal that you have underpaid Charges to us, then without prejudice to our other rights, you shall pay to us an amount equal to such underpayment as calculated in accordance with our current price list within 10 Business Days of the date of the relevant audit.
5.4. You shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Cloud Software Services that:
5.4.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
5.4.2. facilitates illegal activity;
5.4.3. depicts sexually explicit images;
5.4.4. promotes unlawful violence;
5.4.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
5.4.6. is otherwise illegal or causes damage or injury to any person or property; and we reserve the right, without liability or prejudice to our other rights, to disable your access to any material that breaches the provisions of this clause.
5.5. You shall not:
5.5.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
5.5.1.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or
5.5.1.2. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
5.5.2. use the Cloud Software Services in a manner that breaches the fair usage policy that we publish from time to time or otherwise in a manner that attempts to avoid payment of Charges that are properly payable to us in respect of your usage of the Cloud Software Services;
5.5.3. access all or any part of the Cloud Software Services in order to build a product or service which competes with the Cloud Software Services; or
5.5.4. use the Cloud Software Services to provide services to third parties; or
5.5.5. subject to clause 23.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Cloud Software Services available to any third party except the Authorised Users, or
5.5.6. attempt to obtain, or assist third parties in obtaining, access to the Cloud Software Services, other than as provided under this clause; or

5.5.7. remove the SIM card any Charge Point without our prior written consent; or otherwise disconnect any of the Charge Points from the mobile telecommunications network; or
5.5.8. introduce or permit the introduction of, any Virus or Vulnerability into our network and information systems.
5.6. You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Cloud Software Services and, in the event of any such unauthorised access or use, promptly notify us.
5.7. Without prejudice to any other rights that we might have, in the event that you are in breach of any of your obligations under this Agreement we shall have the right, immediately and without notice, to suspend the provision of the Cloud Software Services to you until such time as such breach has been remedied or resolved to our satisfaction.
5.8. The rights provided under this clause 5 are granted to you only, and shall not be considered granted to any subsidiary or holding company of yours.

6. Availability of Cloud Software Services

6.1. We shall use commercially reasonable endeavours to make the Cloud Software Services available 24 hours a day, seven days a week, except for:
6.1.1. planned maintenance carried out during the maintenance window of [10.00 pm to 2.00 am UK time]; and
6.1.2. unscheduled maintenance performed outside Normal Business Hours, provided that we have used reasonable endeavours to give you notice in advance.
6.2. [We will, as part of the Cloud Software Services provide you with our standard customer support services during Normal Business Hours in accordance with the Support Services Policy in effect at the time that the Services are provided. We may amend the Support Services Policy in our sole and absolute discretion from time to time. You may purchase enhanced support services separately at our then current rates.]

7. Customer Data

7.1. You shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
7.2. We shall archive, back up and retain the Customer Data for a period of [30 days] after it is created, following which such Customer data may be deleted by us.
7.3. In the event of any loss or damage to Customer Data, your sole and exclusive remedy against us shall be for us to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by us. We shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by us to perform services related to Customer Data maintenance and back-up for which we shall remain fully liable under clause 7.9).
7.4. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
7.5. The parties acknowledge that:
7.5.1. if you process any personal data on your behalf when performing our obligations under this Agreement, you are the controller and we are the processor for the purposes of the Data Protection Legislation.
7.5.2. we shall agree a document that sets out the scope, nature and purpose of processing by us, the duration of the processing and the types of personal data and categories of data subject.
7.5.3. the personal data may be transferred or stored outside the EEA or the country where you and the Authorised Users are located in order to carry out the Services and our other obligations under this Agreement.
7.6. Without prejudice to the generality of clause 7.4, we will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to us for the duration and purposes of this Agreement so that we may lawfully use, process and transfer the personal data in accordance with this Agreement on your behalf.
7.7. Without prejudice to the generality of clause 7.4, we shall, in relation to any personal data processed in connection with the performance by us of our obligations under this Agreement:
7.7.1. process that personal data only on your documented written instructions unless we are required by the laws of any member of the European Union or by the laws of the European Union applicable to us and/or Domestic UK Law (where Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (Applicable Laws). Where we are relying on Applicable Laws as the basis for processing personal data, we shall promptly notify you of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit us from so notifying you;
7.7.2. not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
7.7.2.1. you or we have provided appropriate safeguards in relation to the transfer;
7.7.2.2. the data subject has enforceable rights and effective legal remedies;
7.7.2.3. we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
7.7.2.4. we comply with reasonable instructions notified to us in advance by you with respect to the processing of the personal data;
7.7.3. assist you, at your cost, in responding to any request from a data subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
7.7.4. notify you without undue delay on return personal data of a personal data breach;
7.7.5. at your written direction, delete or return personal data and copies thereof to you on termination of the agreement unless required by Applicable Law to store the personal data (and for these purposes the term "delete" shall mean to put such data beyond use); and
7.7.6. maintain complete and accurate records and information to demonstrate our compliance with this clause 7 and immediately inform you if, in our opinion, an instruction infringes the Data Protection Legislation.
7.8. Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of any access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
7.9. You consent to us appointing a third party as a third-party processor of personal data under this Agreement. We confirm that we have entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 7 and which we confirm reflect and will continue to reflect the requirements of the Data Protection Legislation. As between you and us, we shall remain fully liable for all acts or omissions of any third-party processor appointed by us pursuant to this clause 7.
7.10. Either party, at any time on not less than 30 days' notice, revise this clause 7 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).
7.11. You understand that the Software will store details of your usage of the Cloud Software Services and the Software and various other data which you input, including Customer Data. You agree that we may store the results of your usage of the Cloud Software Services and the Software and such other data as you may input, including Customer Data, and use the same to improve the Services and the Software and the different products and services which we offer to our customers. In addition, you agree that we may use the same for the purposes of research and provision of aggregated statistical data and reports for the benefit of our customers.

8. Third party providers

You acknowledge that the Cloud Software Services may enable or assist you to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that you do so solely at your own risk. We make no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by you, with any such third party. Any contract entered into and any transaction completed via any third-party website is between you and the relevant third party, and not us. We recommend that you refer to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. We do not endorse or approve any third-party website nor the content of any of the third-party website made available via the Cloud Software Services.

9. Our obligations

9.1. We undertake that the Services will be performed with reasonable skill and care.
9.2. The undertaking at clause 9.1 shall not apply in relation to the Cloud Software Services to the extent of any non-conformance which is caused by use of the Cloud Software Services contrary to our instructions, or modification or alteration of the Cloud Software Services by any party other than us or our duly authorised contractors or agents.
9.3. If the Services do not conform with the foregoing undertaking, we will, at our expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide you



with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes your sole and exclusive remedy for any breach of the undertaking set out in clause 9.1.

9.4. We:

9.4.1. do not warrant that:

9.4.1.1. your use of the Cloud Software Services will be uninterrupted or error-free; or

9.4.1.2. the Cloud Software Services and/or the information obtained by you through the Services will meet your requirements; or

9.4.1.3. the Software or the Cloud Software Services will be free from Vulnerabilities; or

9.4.1.4. the Software or Cloud Software Services will comply with any Heightened Cybersecurity Requirements.

9.4.2. are not responsible for any interruptions, delays, delivery failures, or any other loss or damage resulting from the transfer of data over any of either your or our communications networks and facilities, including the internet and any wireless or cellular communications network, and you acknowledge that the Cloud Software Services and the Revenue Management Services may be subject to interruptions, limitations, delays and other problems inherent in the use of such communications facilities.

9.5. This Agreement shall not prevent us from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

9.6. We warrant that we have and will maintain all necessary licences, consents, and permissions necessary for the performance of our obligations under this Agreement.

10. Your obligations

10.1. You shall:

10.1.1. provide us with:

10.1.1.1. all necessary co-operation in relation to this Agreement; and

10.1.1.2. all necessary access to such information as may be required by us; in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

10.1.2. without affecting your other obligations under this Agreement, comply with all applicable laws and regulations with respect to your activities under this Agreement;

10.1.3. carry out all your other responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in your provision of such assistance as agreed by the parties, we may adjust any agreed timetable or delivery schedule as reasonably necessary.

10.1.4. ensure that the Authorised Users use the Cloud Software Services in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

10.1.5. obtain and shall maintain all necessary licences, consents, and permissions necessary for us, our contractors and agents to perform their obligations under this Agreement, including without limitation you shall obtain the consent of any third party that may from time to time be required for us to install such software as we may require on the Charge Points in order to perform the services;

10.1.6. allow us access to your premises and the Charge Points to install and update any software, telecommunications or network connectivity on the Charge Points;

10.1.7. ensure that your network and systems comply with the relevant specifications provided by us from time to time; and

10.1.8. be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing all your network connections and telecommunications links from your systems to our data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet.

10.2. You undertake that, during the Subscription Term, you shall not do any of the following:

10.2.1. install at or about the premises at which the Charge Points are installed any additional electric vehicle charging points without our prior written consent, or procure or permit any third party to do so;

10.2.2. permit anyone other than EV Smart to provide services similar to the Cloud Software Services or Revenue Management Services in relation to the Charge Points;

10.2.3. permit the collection of revenue from Car Park Users other than via the [EV Smart App];

10.2.4. install or permit the installation of any software on the Charge Points other than that which we may from time to time install;

A breach of this clause 10.2 shall be a material breach of the Agreement.

10.3. You warrant that you have and will maintain all necessary licences, consents, and permissions necessary to enter into this Agreement and for the performance of your obligations under this Agreement.

11. Charges and payment

11.1. In consideration of the performance of the Services, you shall pay the Charges.

11.2. We shall invoice you for the Cloud Subscription Charges, on a [monthly] basis.

11.3. You shall pay each invoice:

11.3.1. within [30] days of the date of the invoice; and

11.3.2. in full and in cleared funds to a bank account nominated in writing by EV Smart.

11.4. If we have not received payment of any of the Charges by the due date for payment, and without prejudice to any of our other rights and remedies:

11.4.1. we may, without liability to you, disable your password, account and access to all or part of the Cloud Software Services and we shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

11.4.2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to [3%] over the then current base lending rate of our bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

11.5. All amounts and fees stated or referred to in this Agreement:

11.5.1. shall be payable in pounds sterling;

11.5.2. are, subject to clause 15.3.2, non-cancellable and non-refundable;

11.5.3. are exclusive of value added tax, which shall be added to the EV Smart's invoice(s) at the appropriate rate.

11.6. We shall be entitled to increase any of the Cloud Subscription Charges [at the start of each Renewal Period] upon [30] days' prior notice to you.

11.7. All amounts due from you under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

11.8. We may at any time, without notice to you, set off any liability you may have to us for any amount due under this Agreement against any liability we may have to you under clause 3.2.

12. Proprietary rights

12.1. You acknowledge and agrees that we or our suppliers own all intellectual property rights in the Services. Except as expressly stated herein, this Agreement does not grant you any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services.

12.2. Any intellectual property rights or goodwill derived from the use by you of the Services or from any derivatives, suggestions, enhancements, recommendations or any other feedback you provide, shall accrue to us. We may, at any time, call for a document confirming the assignment of such intellectual property rights and goodwill and you shall immediately execute it.

12.3. [We hereby grant to you a non-exclusive licence during the Subscription Term to use our [registered/unregistered trade marks] [on the charging equipment] only in accordance with EV Smart guidelines available from time to time. For any use outside the guidelines you must obtain our prior written consent.]

12.4. You hereby grant to us a non-exclusive licence during the Subscription Term to use your registered trade marks, unregistered trade marks, domain names or any other branding, to enable us to advertise that you are using the Services.

12.5. We confirm that we have all the rights in relation to the Services that are necessary to grant all the rights we purport to grant under, and in accordance with, the terms of this Agreement.

13. Confidentiality

13.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

13.1.1. is or becomes publicly known other than through any act or omission of the receiving party;

13.1.2. was in the other party's lawful possession before the disclosure;

13.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

13.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence.

13.2. Subject to clause 13.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

13.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

13.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 13.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

13.5. You acknowledge that details of the Services, and the results of any performance tests of the Services, constitute our Confidential Information.

13.6. We acknowledge that the Customer Data is your Confidential Information.

13.7. The above provisions of this clause 13 shall survive termination of this Agreement, however arising.

14. Indemnity

14.1. You shall defend, indemnify and hold harmless EV Smart against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with your use of the Cloud Software Services otherwise than in accordance with the terms of this Agreement.

15. Limitation of liability

15.1. Except as expressly and specifically provided in this Agreement:

15.1.1. you assume sole responsibility for results obtained from the use of the Cloud Software Services by you, or for any conclusions drawn from such use. We shall have no liability for any damages caused by errors or omissions in any information, instructions or scripts provided to you by you in connection with the Services, or any actions taken by us at your direction;

15.1.2. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

15.1.3. the Cloud Software Services are provided to the Customer on an "as is" basis.

15.2. Nothing in this Agreement excludes either parties' liability:

15.2.1. for death or personal injury caused by our negligence; or

15.2.2. for fraud or fraudulent misrepresentation.

15.3. Subject to clause 15.1 and clause 15.2:

15.3.1. we shall not be liable whether in tort (including for [negligence or] breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and

15.3.2. our total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the [Total Charges paid] during the 12 months immediately preceding the date on which the claim arose.

16. Term and termination

16.1. This agreement shall, unless otherwise terminated as provided in this clause 16, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of [12 months] (each a "Renewal Period"), unless:

16.1.1. either party notifies the other party of termination, in writing, at least [60 days] before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

16.1.2. otherwise terminated in accordance with the provisions of this Agreement; and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute "the Subscription Term".

16.2. The Customer shall have the right to terminate this Agreement on the third anniversary of the Effective Date. Such right shall be exercised by the Customer giving to EV Smart not less than 60 days' notice prior notice in writing to terminate, such notice expiring on the third anniversary of the Effective Date.

16.3. This Agreement shall, unless otherwise terminated as provided in this clause 16, commence on the Effective Date and shall continue for the Subscription Term.

16.4. Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

16.4.1. the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

16.4.2. the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

16.4.3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;

16.4.4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

16.4.5. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;

16.4.6. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.4.3 to clause 16.4.6 (inclusive);

16.4.7. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

16.4.8. [there is a change of control of the other party;] or

16.5. Without affecting any other right or remedy available to it, EV Smart may terminate this Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than [14] days after being notified in writing to make such payment.

16.6. On termination of this Agreement for any reason:

16.6.1. all access rights granted under this Agreement shall immediately terminate and you shall immediately cease all use of the Services;

16.6.2. each party shall return and make no further use of any equipment, property, and other items (and all copies of them) belonging to the other party;

16.6.3. we may enter your premises at any time to collect our equipment, property and other items;

16.6.4. we may destroy or otherwise dispose of any of the Customer Data in our possession in accordance with clause 7.7.3, unless we receive, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to you of the then most recent back-up of the Customer Data. We shall use reasonable commercial endeavours to deliver the back-up to you within 30 days of its receipt of such a written request, provided that you have, at that time, paid all fees and charges outstanding and resulting from termination (whether or not due at the date of termination). You shall pay all reasonable expenses incurred by us in returning or disposing of Customer Data; and

16.6.5. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

17. Force majeure

We shall have no liability to you under this Agreement if we are prevented from or delayed in performing our obligations under this Agreement, or from carrying on our business, by acts, events, omissions or accidents beyond our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving our workforce or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that you are notified of such an event and its expected duration.

18. Variation

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

19. Waiver

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20. Rights and remedies

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

21. Severance

21.1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

21.2. If any provision or part-provision of this Agreement is deemed deleted under clause 21.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

22. Entire agreement

22.1. This Agreement and any documents referred to in it, constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

22.2. Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

22.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

22.4. Nothing in this clause shall limit or exclude any liability for fraud.

23. Assignment

23.1. You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under this Agreement.

23.2. We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under this Agreement.

24. No partnership or agency

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

25. Third party rights

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

26. Notices

26.1. Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes.

26.2. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

27. Governing law

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

28. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

