

**BENEFICIARY SERVICE AGREEMENT**

**FOR PROVIDING ELECTRIC VEHICLE FLEET SERVICES**

**Between**

**[Name of the Intermediary]**

**And**

**[Name of the Beneficiary]**

**On**

**[DD MMM YYYY]**

This Service Agreement is made on the [Date] day of [Month] of [Year] at Bhubaneswar, Odisha

Between

[Name of the Intermediary], [a/an] [(sole proprietor/ firm/company)] incorporated under [relevant act in India. Ex. The Indian Companies Act, 2013], having its registered office at [registered office address] (hereinafter referred to as “**Intermediary**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors, and permitted assigns) as a Party of the **First Part**;

And

[Name of the Beneficiary], having its registered office at [Insert address of the registered office of Intermediary] (hereinafter referred to as “**Beneficiary**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assignees) as a Party of the **Second Part**;

The EV Fleet Service Provider and [Name of Intermediary] are individually referred to as a ‘**Party**’ and collectively referred to as ‘**Parties**’.

**WHEREAS:**

- A. Odisha Renewable Energy Development Authority (OREDA) has been authorized to aggregate the demand for Electric Vehicles for use under lease model by various beneficiaries of the state of Odisha.
- B. OREDA carried out the selection process for the identifying the EV Fleet Service Provider based on the terms and conditions contained in the RFP No. [RFP No.] dated [DD MMM YYYY] and its Amendments (if any) along with the Draft Agreement and any other documents published or referred by OREDA related to the selection of Fleet service provider.
- C. The EV Fleet Service Provider (EVFSP) has been selected in the process for providing Fleet services of [Number of Cars] No’s to be provided by the Fleet service provider at [Address of the site in Annexure].
- D. OREDA has issued the Letter of Intent No. [Lol no.] dated [DD MMM YYYY] in favour of the Fleet service provider for providing the services as per the terms and conditions contained in the RFP.
- E. The Fleet service provider has furnished the Performance Security in the form of a Bank Guarantee for the sum of INR [Insert amount] (Indian Rupees [in words]) only, in favour of OREDA as per the format Annexure 3 (Bank Guarantee), prescribed by OREDA.
- F. The Fleet service provider has fulfilled the terms and conditions for signing of this Service Agreement as a definitive agreement for providing the services.
- G. The Parties have agreed to execute this Agreement for providing Fleet services by the Fleet service provider to the Beneficiary.

**Now therefore, in consideration of the premises and mutual agreements, covenants and conditions set forth herein, it is hereby agreed by and between the Parties as follows:**

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1. Definitions

The terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003 and the rules or regulations framed thereunder, including those issued/framed by the Appropriate Commission (as defined hereunder), as amended, or re-enacted from time to time.

Definitions and abbreviation	:	Description
AC	:	shall mean Alternating Current
Acceptance	:	shall mean acceptance of the Project and when the Acceptance Certificate is issued to the Successful Bidder and as per the meaning ascribed to it in SOW Clause 3.2.1.3
Acceptance Certificate	:	shall mean formal acceptance of the Project by OREDA by issuing an Acceptance Certificate, as per the meaning ascribed to it in SOW Clause 3.3.1.2 <b>Error! Reference source not found.</b>
Addendum	:	shall have the meaning ascribed to it in ITB Clause 1.2.3.3
Affiliate	:	shall mean a company that, directly or indirectly, <ul style="list-style-type: none"> <li>• controls, or</li> <li>• is controlled by, or</li> </ul> is under common control with, a company developing a Project or a Member in a Consortium/ JV developing the Project and control means ownership by one company of at least 50% (fifty percent) of the voting rights of the other company
AIS	:	shall mean Automotive Industry Standards
AOA	:	shall mean Article of Association
Applicable Law	:	shall mean all laws, bye-laws, statutes, treaties, ordinances, rules, policies, regulations applicable in India and the state of Odisha along with amendments, re-enactments, revisions, applications and adaptations thereto made from time to time and in force and effect, judgments, decrees, injunctions, writs and orders of any court, arbitrator or governmental agency or authority, rules, notifications, guidelines, circulars, orders and interpretations of any Government orders, court or statutory or other body having jurisdiction over the performance of the Scope of Work including applicable permits, as may be in effect at the time of performance of the Scope of Work, provided, however, that if at any time the Applicable Laws are less stringent than the standards set forth in the Work Order hereto, the standard set forth in this Work Order hereto, shall be deemed to be the standards under Applicable Laws
ARAI	:	shall mean Automotive Research Association of India
Authorized Signatory	:	shall mean the authorized signatory of the Bidder as per the power of attorney and Board Resolution issued by the Bidder
AY	:	shall mean Assessment Year
BDS	:	shall mean Bid Data Sheet
Beneficiary	:	shall mean the end user of EV fleet services which is being facilitated by OREDA through EV Fleet Service Provider
Bid	:	shall have the meaning ascribed to it in ITB Clause 1.3.3.1
BIS	:	shall mean Bureau of Indian Standards
CC	:	shall mean Commissioning Certificate
Clarification	:	shall have the meaning ascribed to it in ITB Clause 1.2.3

<b>Definitions and abbreviation</b>	<b>:</b>	<b>Description</b>
CMC	:	shall mean Comprehensive Maintenance Contract
CMC Period	:	shall mean period of 5 years from the date of signing of acceptance certificate, during this period, Successful Bidder shall be responsible for undertake Scheduled Maintenance, Preventive Maintenance, and Breakdown Maintenance of the Project.
Coercive Practice	:	shall have the meaning ascribed to it in ITB Clause 1.1.2
Collusive Practice	:	shall have the meaning ascribed to it in ITB Clause 1.1.2
Corrigendum	:	shall have the meaning ascribed to it in ITB Clause 1.2.3.2
Corrupt Practice	:	shall have the meaning ascribed to it in ITB Clause 1.1.2
CRC	:	shall mean Customer Relationship Centre
Day	:	shall mean the calendar day
DC	:	shall mean Direct Current
DCB	:	shall mean Domestic Competitive Bidding
DSC	:	shall mean Digital Signature Certificate
Effective Date	:	shall mean the date of signing of Beneficiary Service Agreement
E-procurement Service Provider	:	shall mean M/s. Tender Wizard
E-procurement Website	:	shall mean <a href="http://www.tenderwizard.com/OREDA">www.tenderwizard.com/OREDA</a>
Equipment	:	shall have the meaning ascribed to it in SOW Section
EV	:	shall mean Electric Vehicle
EVFSP	:	shall mean the successful bidder selected by the Intermediary through the tendering process for providing End – to – End EV fleet services.
Expiry Date	:	Shall mean the date occurring five (5) years from the starting of commercial Operations by the EV fleet Service Provider unless extended by the Parties as per this Agreement;
FAME	:	Shall mean “Faster Adoption and Manufacturing of Hybrid and Electric Vehicles”
FDR	:	shall mean Fixed Deposit Receipt
FOR	:	shall mean Freight on Road
Fraudulent Practice	:	shall have the meaning ascribed to it in ITB Clause 1.1.2
FY	:	shall mean Financial Year
GOI	:	shall mean Government of India
Government	:	shall mean Government of India or Government of Odisha, as applicable
GST	:	shall mean Goods and Services Tax
HRS	:	shall mean hours
ICAT	:	shall mean International Centre for Automotive Technology
IEC	:	shall mean International Electrotechnical Commission
IFSC	:	shall mean Indian Financial System Code
Incoterms	:	Incoterms means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1er, 75008 Paris, France.
INR	:	shall mean Indian Rupees
Integrity Violation	:	shall have the meaning ascribed to it in ITB Clause 1.1.2
Intermediary	:	shall mean Odisha Renewable Energy Development Agency (OREDA) which shall sign the Service Agreement with EV Fleet Service Provider and Beneficiary Service Agreement with the Beneficiary

<b>Definitions and abbreviation</b>	<b>:</b>	<b>Description</b>
IS	:	shall mean International Standards
ISO	:	shall mean International Organization for Standardization
ITB	:	shall mean Instructions to Bidders
kW	:	shall mean kilowatt
LOI	:	shall mean Letter of Intent
MOA	:	shall mean Memorandum of Association
Month	:	shall mean a calendar month
MSME	:	shall mean Micro, Small & Medium Enterprises
NABL	:	shall mean National Accreditation Board for Testing and Calibration Laboratories
NIT	:	shall mean Notice Inviting Tender
Obstructive Practice	:	shall have the meaning ascribed to it in ITB Clause 1.1.2
OERC	:	shall mean Odisha Electricity Regulatory Commission
OEM	:	shall mean Original Equipment Manufacturer
OREDA	:	shall mean Odisha Renewable Energy Development Agency
OREDA Website	:	shall mean <a href="http://oredaodisha.com/">http://oredaodisha.com/</a>
OREDA's Office Address	:	shall mean S-3/59, Mancheswar Industrial Estate, Bhubaneswar - 751010, Odisha.
OREDA's Official Email Id	:	shall mean <a href="mailto:ceoreda@oredaorissa.com">ceoreda@oredaorissa.com</a>
PAN	:	shall mean Permanent Account Number
PCU	:	shall mean Power Conditioning Unit
PKI	:	shall mean Public Key Infrastructure
Prudent Utility Practices	:	shall mean those practices, methods, acts, equipment specifications, techniques and standards of safety and performance, as may be followed or employed in the performance of the Scope of Work and discharge of the obligations of the Successful Bidder and which (a) are generally accepted internationally for use in the solar power generation industry, taking into account conditions in India and specific to India/ Odisha (as applicable), and includes the exercise of that degree of professional skill, diligence and judgment that would ordinarily be expected from a skilled and experienced Successful Bidder in connection with power stations of the same or similar size and type as the project, (b) are commonly used in prudent electric utility engineering, project management and operations, and (c) would be expected to result in performance of the Scope of Work in a manner consistent with Applicable Laws, reliability, health and safety of workers and community, environmental protection, economy and expediency;
PSU	:	shall mean Public Sector Undertaking
QCBS	:	Shall mean Quality cum Cost-Based Selection
QR	:	shall mean Qualification Requirement
Quoted Price	:	shall mean the price quoted by a Bidder in its Price Bid
RPM	:	shall mean Revolutions per minute
SCC	:	shall mean Special Conditions of Contract
SSCD	:	Shall mean Scheduled Service Commencement Date which is sixty (60) days from signing of the Service Agreement
Schedule of Events	:	shall have the meaning ascribed to it in the NIT
SOW	:	shall mean the Scope of Work
Successful Bidder	:	shall mean the Bidder who is signing the Service Agreement with the

<b>Definitions and abbreviation</b>	<b>and</b>	<b>:</b>	<b>Description</b>
			Intermediary
Tax		:	shall mean all taxes and duties pursuant to any Applicable Laws (whether currently in force or coming into force on or after the last date for submission of online Bid), including, all goods and services tax, tax on the sale of goods (which includes but is not limited to customs duty, anti-dumping duty, basic customs duty, safeguard duty and import duties), duties, but not including income tax, corporation profits tax, capital gains tax and other amounts corresponding thereto and interest, penalty or any other levy applicable on the income, profits, fringe benefits, personal taxes on salaries earned by employees and further includes any interest, surcharge, penalty or fine in connection therewith which may be payable by either Party on such transaction, property, matter mentioned above;
TDS		:	shall mean Tax Deduction at Source
Technical Specification		:	shall have the meaning ascribed to it in Appendix Form 1 under Annexure Clause 5.5.1
USB		:	shall mean Universal Serial Bus
UTR		:	shall mean Unique Transaction Reference number
Year		:	shall mean the calendar year

## 2. **TERM OF AGREEMENT**

### 2.1. ***Effective Date***

2.1.1. This Agreement shall come into effect from the date of signing of this Agreement and such date shall be referred to as the Effective Date.

### 2.2. ***Term of Agreement***

2.2.1. Subject to Article 2.3 and Article 2.4 of this Agreement, this Agreement shall be valid for a 'Term' from the Effective Date until Expiry Date. This Agreement may be extended for a further period prior to the Expiry Date, on mutually agreed terms and conditions.

### 2.3. ***Early Termination***

2.3.1. This Agreement shall terminate before the Expiry Date if either the Beneficiary or Service provider terminates the Agreement, pursuant to Article 10 of this Agreement.

### 2.4. ***Survival***

2.4.1. The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive penalty as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 8 (Force Majeure), Article 10 (Events of Default and Termination), Article 11 (Liability and Indemnification), Article 13 (Governing Law and Dispute Resolution), Article 14 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

### **3. CONDITIONS SUBSEQUENT**

#### **3.1. Condition Subsequent of the Beneficiary**

- 3.1.1. Provide seal and sign undertakings/ acknowledgements/ letters/ applications and any documentary evidence that supports the EV Fleet Service Provider in completing its obligations under condition subsequent
- 3.1.2. Provide unrestricted access to EV Fleet Service Provider and his contractors for construction & related activities under this Agreement for setting up charging stations within thirty (30) days from Effective Date.

#### **3.2. Condition Subsequent of the EV Fleet Service Provider (EVFSP)**

- 3.2.1. Submit Project design and drawings if any to the Intermediary and the Beneficiary within thirty (30) Days from the Effective Date.
- 3.2.2. EVFSP shall be accountable for submission of below mentioned details to Intermediary, copying the Beneficiary, to apply for the completion of the project:
  - i. Project layout/drawing, Single line diagram duly signed and authorized by the Inspecting Authority appointed by the Nodal Agency (OREDA);
  - ii. Bill of Material (BoM) along with requisite test reports and relevant certifications
- 3.2.3. EVFSP shall have sent a written notice, within thirty (30) Days from the Effective Date, to Beneficiary and the Intermediary indicating the major Milestones to commence the services by SSCD (Scheduled Service Commencement Date).
- 3.2.4. The EVFSP agrees and undertakes to make Financing Agreements for its services, shall provide necessary documents to the Intermediary in this regard within one (1) month from the Effective Date.
- 3.2.5. The EVFSP agrees and undertakes to place the Purchase Order for the Electric Vehicles for its services, shall provide necessary documents to the Intermediary in this regard within one (1) month from the Effective Date.

#### 4. **OBLIGATIONS OF EV FLEET SERVICE PROVIDERS AND BENEFICIARY**

##### 4.1. ***EV Fleet Service Providers Obligations***

The EVFSP undertakes to be responsible, at its own cost and risk, for:

##### 4.1.1. Supply, Operation & Maintenance of Electric Vehicles and setting up of Charging stations

- a) Shall provide new Electric Cars for the official use of beneficiaries along with its periodic maintenance.
- b) The vehicles provided shall be in good condition and in any case the vehicles shall not be older than 1 years
- c) Shall ensure that vehicle deployed shall arrive at designated location on time. In an event of delay in arrival beyond 15 minutes, user shall have right to hire other taxi services (which may or may not be of similar hired car category). The fare charges shall be charged to service provider
- d) Shall provide a customer service number for receiving any complaints, suggestions, etc.
- e) Shall be ensured that the vehicles are kept in optimum running condition and avoid accidents attributable due to lack of maintenance and upkeep
- f) Shall ensure that all maintenance work related to assigned vehicle shall be carried out in off duty hours.
- g) The vehicles provided cannot be used for any Private/commercial purpose beyond office hours or during holidays
- h) In the event of break-down, servicing & repairs of the assigned vehicle the service provider at his own cost shall make alternate arrangement by providing similar or higher class of vehicle(s) for which agreement is entered into. Failure to do so will evoke penalty or possible termination of contract
- i) Shall be responsible for roadside assistance for 12 hours a day including 9 hours of normal duty and 6 days a week shall be provided, including car towing service, Ditch extraction service, jump-starting dead batteries, lockout services (In case of key loss/ key breakage/locking of ignition key inside the car), and replacement of flat tires.
- j) Shall be responsible for repair, operation and maintenance activities of Electric Cars and would arrange for a relief vehicle in case of any non-service or delayed service caused due to scheduled maintenance.
- k) shall supply and install chargers in the beneficiary locations or vicinity of the beneficiary locations as per requirement
- l) The Required EV Charging Infrastructure for fast Charging, Type-II & above for AC & DC Charging chargers of CHAdeMO / CCS as may be required by respective beneficiaries (Clients) shall be provided including SCADA System, Mobile app for operation and providing services of Charging Infrastructure and source of energy supply. Cost of charging of EV shall be borne by the EV Fleet service provider up to 2000 Km / Vehicle / Month for small & sedan category vehicles and 2500 Km / Vehicle / Month for SUV category vehicles.
- m) Electricity charges to be paid to DISCOMs for charging of the Electric Cars are to be borne by the EV fleet service provider / OEM / bidder. Anything beyond the limit of 2000 Km / Vehicle / Month for small & sedan category vehicles and 2500 Km / Vehicle / Month for SUV category vehicles will be reimbursed in the form of variable charges.
- n) shall only provide vehicles which have the comprehensive insurance.
- o) Shall establish and maintain an appropriate organizational structure to enable seamless management of the fleet.

- p) Shall develop required EV Charging Infrastructure for fast Charging, Type-II & above for AC & DC Charging chargers of CHAdeMO/ CCS as may be required
- q) Electricity charges to be paid to DISCOMs for charging of the Electric Cars to be borne by the EV Fleet Service Provider and this will be recovered from the beneficiary through the monthly variable charges whenever the ceiling limit of 2000km or 2500 km is exceeded in any given month.
- r) Shall Procure all the materials, consumables, spares etc. required for carrying out maintenance of Electric vehicles, driver's payment etc. at its own cost.
- s) The Electric Cars shall be covered under a comprehensive Insurance package including zero depreciation during the entire contract period. The EV fleet service provider shall bear the cost of insurance of vehicle, charging station and other associated equipment needed to provide end to end EV fleet services to the beneficiary entities.
- t) The vehicles would be provided along with comprehensive free Annual maintenance contract for the period of five (5) years. The Electric Cars should carry a warranty of 5 years against any manufacturing defect. The car batteries too should carry a free replacement warranty up till 5 years or 1,00,000 kms whichever is earlier. The battery will be replaced only if the battery capacity reduces below 75% of its capacity.
- u) Shall update the log book at least once in every 72 hours. Failure to do so shall be penalized as per this contract. At the time of termination of contract, the service provider shall hand over the log book.
- v) Shall provide the detailed efficiency study/reports every year.

#### 4.1.2. Provision of Drivers

- a) Shall provide a driver for each Electric Car supplied or engage the existing driver by providing necessary training.
- b) Drivers that possess a valid commercial driving license shall be deployed by the EV Fleet service provider.
- c) Police verifications for deployed driver shall be ensured
- d) The driver of the vehicle deployed for beneficiary duties maintain polite & courteous behavior towards beneficiaries and guests. Following may be construed as "Misbehaviour" and shall attract penalties as per provisions of the contract. Repeated instances may result in termination of services
  - Denial of duty during contract period, or during hours as noticed by beneficiary;
  - Use of abusive language;
- e) The driver must be well trained and efficient. The driver shall be instructed to behave with the clients very politely and and in no case shall report to duty in an inebriated state or consume alcohol while on duty. In such an event beneficiary shall have full rights to terminate the contract with immediate effect.
- f) Drivers of all the vehicles shall be properly dressed in a uniform. The Service Provider shall provide at his own cost proper uniform and badges as per STATE MOTOR VEHICLES RULES (amended up to date) and photo identity cards to the drivers.
- g) Driver and vehicle should not be changed frequently. If in most unavoidable circumstances a change of driver/ vehicle is required, the concerned user should be informed at least one day before the day of such changes.

- h) Shall ensure that all drivers have working mobile phone connection and contact number be provided to beneficiary so that they can be contacted whenever required. Any changes in the contact number during the tenure of the contract will be immediately notified the beneficiary of the above change.
- i) Shall ensure availability of adequate number of vehicles and drivers in a manner that issues relating to leave/rest of drivers are addressed as per statutory rules/regulations.
- j) Shall provide standby vehicle during the periodical maintenance of the vehicle

#### 4.1.3. Comprehensive maintenance

- a) Shall be required to undertake Scheduled Maintenance, Corrective Maintenance, and Breakdown Maintenance of the Electric Cars and Charging Stations during the contract Period.
- b) shall take comprehensive insurance cover with third party unlimited liability risk of the vehicles detailed for the beneficiary requirement. User shall not be liable for any damages whatsoever to public property and /or any third person due to any accident arising out of and in the course of deployment of service provider's vehicle.
- c) Shall adhere to all maintenance procedures as required by Intermediary from time to time, without any protest or hesitation.
- d) shall ensure that all electrical connections including lights (both brake and front), horn, turn indicators, and other vehicle systems shall be periodically checked and maintained by Service Provider to avoid any inconvenience to beneficiary.
- e) Shall also undertake Corrective Maintenance and Breakdown Maintenance as and when required upon receipt of service request from the Intermediary or the Beneficiaries. Such service request shall be resolved and made functional within a maximum period of seven (7) Days from the date when such service request is raised, failing which might restrict the EV Fleet Service Provider from participating in the future opportunities of Intermediary, subject to the final decision at the discretion of Intermediary only.
- f) Shall train the Drivers on day-to-day maintenance and upkeep of the Electric Cars.
- g) Shall establish a local office in Bhubaneswar, Cuttack and Puri Regions to deliver uninterrupted and sustainable Comprehensive Maintenance during the contract Period.

#### 4.1.4. Statutory Rules compliance & Taxes

EV Fleet Service Provider shall ensure to comply all the statutory rules, regulations and taxes including and at all times during the contract period shall ensure the following:

- a) shall take comprehensive insurance cover with third party unlimited liability risk of the vehicles detailed for the beneficiary requirement. User shall not be liable for any damages whatsoever to public property and /or any third person due to any accident arising out of and in the course of deployment of service provider's vehicle
- b) shall be solely responsible for any claims by any third party and/or employees of beneficiary traveling in the vehicle for any injuries caused by the driver of the vehicle whether by accident or otherwise
- c) The beneficiary will in no way be responsible for violation of traffic rules and /or infringement of any other law for the time being in force, either by the driver of the vehicle or by the service provider. The driver as well as Agency shall comply with relevant rules and regulations of Motor Vehicles Act and Rules applicable at present or in future during the tenure of the contract and as may be enforced from time to time for which beneficiary would not be held liable/responsible in any manner whatsoever. Onus of compliance of all

the applicable Laws/ Acts/Rules including those under Motor Vehicle Acts/Rules shall rest with the Agency only and beneficiary will not be liable in any manner.

- d) shall be responsible for ensuring compliance with the provisions related to Labour Law and especially Minimum Wages Act, Payment of Wages Act, PF, ESI Act, Payment of Bonus Act, Contract Labour [R&A] Act, Workmen Compensation Act etc. as applicable from time to time. The employees of the Fleet Service Provider shall not be deemed to be employees of the beneficiary and hence the compliance of the applicable acts laws will be the sole responsibility of the Fleet Service Provider.
- e) shall be personally responsible for any theft, misconduct and /or disobedience on the part of drivers so provided by him
- f) During the contract period, if the vehicle is seized or detained or requisitioned by Police/Motor Vehicle Authority or any other authorities for whatsoever reasons that will be at the service provider's risk. Also, alternate vehicle of similar or higher category will be provided by Agency without any extra charges.
- g) The vehicles deployed for duty for the beneficiary shall at no point of time carry any person other than personnel authorized by beneficiary.

#### 4.1.5. Invoice, Registration and Nodal Officer:

- a) Shall raise an invoice in the first week of every month for the preceding month
- b) All the cost and steps associated with the registration and de-registration of Electric Cars with the regional transport authority including Motor Vehicle Tax would be borne by the Fleet service provider.
- c) Fleet service provider would assign one nodal officer for the client to manage client queries & urgencies and should through e-mail inform name and contact details of the nodal officer to the Intermediary and the Beneficiary.

#### 4.2. **Beneficiary Obligations**

- a) Shall be responsible for payment of all the taxes like Toll Tax, Octroi, Parking, GST, etc. as applicable
- b) Shall provide secured free parking space and space for setting up charging stations for the Electric Cars in or around their office premises.
- c) Shall maintain logbooks for the usage of hired Electric Cars. Kilometer reading shall be recorded and verified regularly by an authorized officer from the beneficiary.
- d) Shall apply for a separate electric utility connection from DISCOMs for supplying power to the charging station and the EV Fleet service provider shall be responsible for reimbursing the cost of connection and monthly charges to the Beneficiary based on the invoices/ bills raised by the DISCOMs to the respective beneficiaries.
- e) Shall appoint a Nodal Officer, who shall be the single point of contact and shall be responsible for all coordination activities on behalf of the beneficiary.
- f) Shall make necessary payments to as per the rates determined in a timely manner subject to any deductions such as penalties, statutory deduction etc.

#### 4.3. **Extension of Time**

- 4.3.1. In the event that the EVFSP is prevented from performing its obligations under Article 4.1 by the Service Commencement Date due to:
  - a. any Beneficiary Event of Default; or
  - b. Force Majeure Events affecting Beneficiary, or

- c. Force Majeure Events affecting the EV Fleet Service Provider,
- d. Intermediary requested for providing the Electric Cars in a phased manner as mentioned in the Lol.

the Service Commencement Date and the Expiry Date shall be deferred, subject to Article 4.3.5, for a reasonable period but not less than 'day for day' basis, to permit EVFSP or the Beneficiary through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the EVFSP or the Beneficiary, or till such time such Event of Default is rectified by Beneficiary.

- 4.3.2. In case of extension due to reasons specified in Article 4.3.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of three (3) months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 10.5. In case neither Party terminates the Agreement under this clause, the Agreement shall stand terminated on the expiry of twelve (12) months of the continuation of the Force majeure event unless the Parties mutually agree to extend the Agreement for the further period.
- 4.3.3. If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Service Commencement Date or the Expiry Date should be deferred, any Party may raise the Dispute to be resolved in accordance with Article 13.
- 4.3.4. As a result of such extension, the newly determined Service Commencement Date and newly determined Expiry Date shall be deemed to be the Service Commencement Date and the Expiry Date for the purposes of this Agreement.
- 4.3.5. Notwithstanding anything to the contrary contained in this Agreement, any extension of the Service Commencement Date arising due to any reason envisaged in this Agreement shall not be allowed beyond the date pursuant to Article 4.3.1
- 4.3.6. Delay in commencing the services beyond the Service Commencement Date for reasons other than those specified in Article 4.3.1 shall be an Event of Default on part of the Fleet service provider and shall be subject to the consequences specified in Article 4.4.

#### 4.4. ***Liquidated Damages for delay in providing services***

- 4.4.1. If the EVFSP is unable to commence the services by the Scheduled Service Commencement Date (SSCD) other than for the reasons specified in Article 4.3.1, the EVFSP shall pay to the the Intermediary, liquidated damages for the delay in providing services by the Scheduled Service Commencement Date as per the following:

Delay beyond the Scheduled Service Commencement Date up to (& including) the date as on six (6) weeks from the SSCD, the Intermediary shall have the right to impose penalty by encashing the PBG, one (1) bank guarantee per week up to **six (6) weeks.**

- 4.4.2. The EVFSP further acknowledge that the amount of the liquidated damages fixed is genuine and reasonable, sufficing the damage occurred to the Beneficiary.

## 5. **INSURANCES**

### 5.1. ***Insurance***

5.1.1. The EVFSP shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of this Agreement, Insurances against such risks to keep the Project in good condition and shall take 'Industrial All Risk Insurance policy' covering risks against any loss or damage, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements, and under the applicable laws.

### 5.2. ***Application of Insurance Proceeds***

5.2.1. In case of the Project not being implemented through Financing Agreement(s), save as expressly provided in this Agreement or the Insurances, the proceeds of any Insurance claim made due to loss or damage to the Project, or any part of the Project shall be first applied to reinstatement, replacement or renewal of such loss or damage.

In case of the Project being financed through Financing Agreement(s), save as expressly provided in this Agreement or the Insurances, the proceeds of any Insurance claim made due to loss or damage to the Project, or any part of the Project shall be applied as per such Financing Agreements.

5.2.2. If a Force Majeure Event renders the Project no longer economically and technically viable and the insurers under the Insurances make payment on a "total loss" or equivalent basis, Beneficiary shall have claim on such proceeds of such Insurance limited to outstanding dues of Beneficiary against Fleet service provider.

### 5.3. ***Effect on liability of Beneficiary***

5.3.1. Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation, or expense which is insured or not or for which the EVFSP can claim compensation, under any Insurance shall not be charged to or payable either by the Intermediary or by the Beneficiary. It is for the EVFSP to ensure that appropriate Insurance coverage is taken for payment by the insurer for the entire loss and there is no under Insurance or short adjustment etc.

6. **APPLICABLE CHARGES**

- 6.1. The Intermediary shall be entitled to receive a fixed rate of INR xx.xx/ month (..... per month) inclusive of the 5% transaction charges as competitively discovered in the RfP [No. xxx], fixed for the entire Term of this Agreement of 5 years, with effect from the start of services.
- 6.2. The EV Fleet Service Provider shall provide the Electric Car for a monthly travel distance of 2000 Km / Vehicle for small / hatchback and sedan models and 2500 Km/ Vehicle for SUV models. The cost of charging for this distance is included in the monthly rental price. Any additional distance in Km travelled by the Electric vehicle over and above the above limits will be reimbursed by the beneficiary on submission of monthly invoice based on following formula:

<b>Charges for Additional distance in Km travelled by the Electric Vehicle over and above the limits (in Km)</b>	Energy consumed for the additional distance over the monthly limit (in kWh) x Prevailing EV charging tariff / input cost of electricity as per OERC (INR/kWh)
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## 7. **BILLING AND PAYMENT**

### 7.1. **General**

7.1.1. From the commencement of services, the Beneficiary shall pay to the Intermediary, the Monthly Payments subject to the adjustments as per provisions of this Agreement including Article 5 in accordance with Article 6 and Article 8. All Tariff Payments by Beneficiary shall be in Indian Rupees.

### 7.2. **Delivery and Content of Monthly Bills/Supplementary Bills**

7.2.1. The EVFSP shall issue to the Intermediary and the Beneficiary, a soft & hard copy of the signed Monthly Bill, for the immediately preceding month based on the Kilometer Reading along with all relevant documents

### 7.3. **Payment of Monthly Bills**

7.3.1. The Beneficiary shall pay the fixed amount payable under the Monthly Bill in advance to the Intermediary on submission of the proforma invoice by the Intermediary by the Due Date.

7.3.2. Intermediary shall pay the amount payable under the Monthly Bill by the Due Date to such account of the Fleet service provider, as shall have been previously notified by the EVFSP.

7.3.3. All payments required to be made under this Agreement shall also include any deduction or set off for:

- i. deductions required by the Law; and
- ii. Amount claimed by Beneficiary, if any, from the fleet service provider, will be adjusted from the monthly payments.

The EVFSP shall open a bank account (the "Fleet service provider Designated Account") for all the Payments to be made by the Beneficiary and notify Beneficiary of the details of such account at least sixty (60) days before the dispatch of the first Monthly Bill.

### 7.3.4. **Late Payment Surcharge**

In the event of delay in payment of a Monthly Bill by the Beneficiary beyond thirty (30) days of its Due Date, a Late Payment Surcharge shall be payable to the Intermediary at the rate of 1.50% per month on the outstanding amount calculated on a day-to-day basis. The Late Payment Surcharge shall be claimed by the Intermediary through the Supplementary Bill.

### 7.3.5. **Rebate**

For payment of any Bill on or before Due Date, the following Rebate shall be paid by the Intermediary to the Beneficiary or shall be adjusted in the payment made by the Beneficiary to the Intermediary in the following manner.

- a. A Rebate of 1.50% shall be payable to Beneficiary for the payments made within a period of seven working days of the submission of Bill along with required supporting documents.
- b. No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties, cess, etc. and on Supplementary Bill.

### 7.4. **Payment Security Mechanism-Letter of Credit**

7.4.1. Beneficiary shall provide to the Intermediary, in respect of payment of its Monthly Bills and/or Supplementary Bills, a Yearly unconditional, revolving, and irrevocable letter of credit ("Letter of Credit"), opened and maintained which may be drawn upon by the fleet service provider.

- 7.4.2. Not later than one (1) Month before the start of services, Beneficiary through a scheduled bank open a Letter of Credit in favor of the Intermediary, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to monthly rate determined in the tender which is INR. \_\_\_\_\_:
- 7.4.3. Provided that the Intermediary shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill and shall not make more than one drawl in a Month.
- 7.4.4. Beneficiary shall cause the scheduled bank issuing the Letter of Credit to intimate the fleet service provider, in writing regarding the establishing of such irrevocable Letter of Credit.
- 7.4.5. Beneficiary shall ensure that the Letter of Credit shall be renewed not later than its expiry.
- 7.4.6. All costs relating to opening, maintenance of the Letter of Credit shall be borne by Beneficiary.
- 7.4.7. If the Beneficiary fails to pay undisputed Monthly Bill or Supplementary Bill or a part there of within and including the Due Date, then, subject to Article 7.4.3 & 7.5.2 the Intermediary may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from Beneficiary, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 7.4.1 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:
- a. a copy of the Monthly Bill or Supplementary Bill which has remained unpaid and;
  - b. a self-certificate from the Intermediary to the effect that the bill at item (a) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;

**7.5. Disputed Bill**

- 7.5.1. If the Beneficiary does not dispute a Monthly Bill, or a Supplementary Bill raised by the EVFSP within fifteen (15) days of receiving it, then such Bill shall be taken as conclusive.
- 7.5.2. If the Beneficiary disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay undisputed amount of the invoice amount and it shall within fifteen (15) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:
- i. the details of the disputed amount;
  - ii. its estimate of what the correct amount should be; and
  - iii. all written material in support of its claim.
- 7.5.3. If the EVFSP agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 7.5.2, the EVFSP shall revise such Bill and present along with the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party, including the date on which such payment has been received a refund.
- 7.5.4. If the EVFSP does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 7.5.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Dispute Disagreement Notice) to the Intermediary and the Beneficiary providing:
- i. reasons for its disagreement;

- ii. its estimate of what the correct amount should be; and iii) all written material in support of its counterclaim.
- 7.5.5. Upon receipt of the Bill Dispute Disagreement Notice by the Intermediary under Article 7.5.4 authorized representative(s) or a director of the Board of Directors/ member of the Board of Intermediary & Beneficiary and an authorized representative of the EVFSP shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Dispute Disagreement Notice.
- 7.5.6. If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Dispute Disagreement Notice pursuant to Article 7.5.4, the matter shall be referred to Dispute resolution in accordance with Article 13.
- 7.5.7. For the avoidance of doubt, it is clarified that despite a Dispute regarding an invoice, the Beneficiary shall, without prejudice to its right to Dispute, be under an obligation to make payment of the undisputed amount of the invoice amount in the Monthly Bill and the Fleet service provider shall, without prejudice to its right to Dispute, be under an obligation to continue providing the services.
- 7.6. ***Quarterly and Annual Reconciliation***
- 7.6.1. The Parties acknowledge that all payments made against the Monthly Bills and Supplementary Bills shall be subject to quarterly reconciliation and annual reconciliation at the end of each Contract Year within 30 days
- 7.6.2. The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be, has been finally verified and adjusted, the Fleet service provider, the Intermediary and the Beneficiary shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the EVFSP shall make appropriate adjustments in the next Monthly Bill. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 13.
- 7.7. ***Payment of Supplementary Bill***
- 7.7.1. Fleet service provider may raise a ("Supplementary Bill") for payment on account of:
  - i. Change in Law as provided in Article 9And such Supplementary Bill shall be paid by the other Party.
- 7.7.2. Beneficiary shall remit all amounts due under a Supplementary Bill raised by the EV Fleet Service Provider to their Designated Account by the Due Date. No late payment surcharge will be applicable in this case.

## 8. **FORCE MAJEURE**

### 8.1. **Definitions**

8.1.1. In this Article, the following terms Affected Party, and Force Majeure, and shall have the following meanings.

### 8.2. **Affected Party**

8.2.1. An affected Party means Beneficiary or the EVFSP whose performance has been affected by an event of Force Majeure.

### 8.3. **Force Majeure**

8.3.1. A 'Force Majeure' means any event or circumstance or combination of events those stated below that wholly or partly prevents or unavoidable delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

- a. Act of God, including, but not limited to lightning, drought, fire, and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, or tornado if and only if it is declared/ notified by the competent state/ central authority/ agency (as applicable);
- b. any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist, or military action if and only if it is declared/notified by the competent state/ central authority/ agency (as applicable); or
- c. radioactive contamination or ionizing radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Project by the Affected Party or those employed or engaged by the Affected Party.

### 8.4. **Force Majeure Exclusions**

8.4.1. Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

- a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, or consumables for the Project;
- b. Delay in the performance of any contractor, sub-contractor, or their agents;
- c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- d. Strikes at the facilities of the Affected Party;
- e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f. Non-performance caused by, or connected with, the Affected Party's:
  - i. Negligent or intentional acts, errors, or omissions;
  - ii. Failure to comply with an Indian Law; or
  - iii. Breach of, or default under this Agreement.

### 8.5. **Notification of Force Majeure Event**

- 8.5.1. The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than fifteen (15) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.
- 8.5.2. Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.
- 8.5.3. The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.

8.6. ***Duty to Perform and Duty to Mitigate***

- 8.6.1. To the extent not prevented by a Force Majeure Event pursuant to Article 8.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

8.7. ***Available Relief for a Force Majeure Event***

- 8.7.1. Subject to this Article 8:
- a. no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered, or delayed due to a Force Majeure Event;
  - b. every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations;
  - c. For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.
  - d. Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event.

## 9. CHANGE IN LAW

### 9.1. Definitions

In this Article the term "Change in Law" means the occurrence of any of the following events after the Bid Submission Date resulting into any additional recurring/ non-recurring expenditure by the EVFSP or any income to them, including:

- i. the enactment, coming into effect, adoption, promulgation, amendment, modification, or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- ii. change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- iii. the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- iv. change in any Consents, approvals, or licenses available or obtained for the service, otherwise than for default of the EVFSP, which results in any change in any cost of or revenue from the business of leasing Electric Cars by the Fleet service provider to the Beneficiary under the terms of this Agreement;
- v. a change in the terms and conditions prescribed for obtaining any Consents or the inclusion of any new terms or conditions for obtaining such Consents; except due to any default of the EVFSP;
- vi. change in the Rules, Regulations, Orders, or any document issued or released by the any Government Authority;
- vii. any change in taxes, duties and cess or introduction of any taxes, duties and cess made applicable for Leasing of Electric Cars by Fleet service providers as per the terms of this Agreement but shall not include: (i) any change in any withholding tax on income or dividends distributed to the shareholders of the EVFSP, or (ii) change in the rates of existing taxes applicable to the EVFSP or (iv) change in income taxes applicable for the EVFSP.

However, Change in Law shall not include

- i. any change in taxes on corporate income or
- ii. any change in any withholding tax on income or dividends distributed to the shareholders of the Fleet service provider, or
- iii. any change on account of regulatory measures by the Appropriate Commission.

In the event a Change in Law results in any adverse financial loss/ gain to the Fleet service provider then, in order to ensure that they are placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the EVFSP/ the Beneficiary shall be entitled for compensation by the other Party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be mutually decided.

In the event of any decrease in the recurring/ nonrecurring expenditure by the EVFSP or any income to the EVFSP on account of any of the events as indicated above, the Intermediary shall communicate the revised tariff to both the EVFSP & the Beneficiary.

## 10. EVENTS OF DEFAULT AND TERMINATION

### 10.1. *EV Fleet Service Provider (EVFSP) Event of Default*

10.1.1. The occurrence and/or continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by Beneficiary of its obligations under this Agreement, shall constitute a EVFSP Event of Default:

- i. the failure to commence fleet services to Beneficiary within 90 days of signing of this agreement, or failure to continue providing the fleet services to Beneficiary throughout the term of this Agreement, or  
if
  - a) the EVFSP assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Project in contravention of the provisions of this Agreement; or
  - b) the EVFSP transfers or novates any of its rights and/ or obligations under this Agreement, in a manner contrary to the provisions of this Agreement; except where such transfer
    - is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or
    - is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;
- ii. if (a) the EVFSP becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding-up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the EVFSP, or (c) the EVFSP goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that a dissolution or liquidation of the EVFSP will not be a EVFSP Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the EVFSP and expressly assumes all obligations of the EVFSP under this Agreement and is in a position to perform them; or
- iii. the EVFSP repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from the Intermediary or the Beneficiary in this regard; or
- iv. except where due to any Beneficiary's failure to comply with its material obligations, the Fleet service provider is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the EVFSP within thirty (30) days of receipt of first notice in this regard given by the Intermediary or the Beneficiary; or
- v. occurrence of any other event which is specified in this Agreement to be a material breach/ default of the EVFSP;

### 10.2. **Beneficiary Event of Default**

10.2.1. The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the EVFSP, of its obligations under this Agreement, shall constitute the Event of Default on the part of Beneficiary:

- i. Beneficiary fails to pay (with respect to a Monthly Bill or a Supplementary Bill), subject to Article 7.5, for a period of ninety (90) days after the Due Date and the Fleet service provider is unable to recover the amount outstanding to them through the Letter of Credit,
- ii. Beneficiary repudiates this Agreement and does not rectify such breach even within a period of sixty (60) days from a notice from the EVFSP in this regard; or
- iii. except where due to any EVFSP's failure to comply with its obligations, Beneficiary is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by Beneficiary within sixty (60) days of receipt of notice in this regard from the EVFSP to the Intermediary and the Beneficiary; or
  - if
    - Beneficiary becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency, or winding-up proceedings and such proceedings remain uncontested for a period of sixty (60) days, or
    - any winding up or bankruptcy or insolvency order is passed against Beneficiary, or
    - Beneficiary goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that it shall not constitute a Beneficiary Event of Default, where such dissolution or liquidation of Beneficiary is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to the Beneficiary and expressly assumes all obligations of the Beneficiary and is in a position to perform them; or;
- iv. Occurrence of any other event which is specified in this Agreement to be a material breach or default of Beneficiary.

**10.3. Procedure for cases of EV Fleet Service Provider Event of Default**

- 10.3.1. Upon the occurrence and continuation of any EVFSP Event of Default under Article 10.1, Intermediary on communication from the Beneficiary shall have the right to deliver to the EVFSP, with a copy to the representative of the lenders with whom the EVFSP has executed the Financing Agreements, a notice stating its intention to terminate this Agreement (EV Fleet Service Provider Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 10.3.2. Following the issue of a EVFSP Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 10.3.3. During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- 10.3.4. Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Fleet service provider Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, Intermediary may terminate the Agreement with EVFSP by giving a written Termination Notice of sixty (60) days to the EVFSP.

- 10.3.5. Subject to the terms of this Agreement, upon occurrence of a EVFSP Event of Default under this Agreement, the lenders in concurrence with the Intermediary, may exercise their rights, if any, under Financing Agreements, to seek substitution of the EVFSP by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the EVFSP and performing the obligations of the EVFSP. However, in the event the lenders are unable to substitute the defaulting Fleet service provider within the stipulated period, the Intermediary or the Beneficiary may terminate the Agreement and may acquire the assets for an amount equivalent to 90% of the debt due or less as mutually agreed, failing which, the lenders may exercise their mortgage rights and liquidate the assets.

Provided that any substitution under this Agreement can only be made with the prior consent of the Intermediary and the Beneficiary including the condition that the selectee meets the eligibility requirements of Request for Proposal (RfP) issued by the Intermediary and accepts the terms and conditions of this Agreement.

- 10.3.6. In the event the lenders are unable to substitute the defaulting EVFSP within the stipulated period, the Intermediary or the Beneficiary may terminate the Service Agreement and may acquire the assets for an amount equivalent to 90% of the debt due, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets.

#### 10.4. ***Procedure for cases of Beneficiary Event of Default***

- 10.4.1. Upon the occurrence and continuation of any Beneficiary Event of Default specified in Article 10.2.1, the Intermediary shall have the right to deliver to the Beneficiary, Beneficiary Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.
- 10.4.2. Following the issue of a Beneficiary Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 10.4.3. During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- 10.4.4. After a period of two hundred and ten (210) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or Beneficiary Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Intermediary may terminate the Agreement and at its discretion may require the Beneficiary to either (i) takeover the assets by making a payment of the termination compensation equivalent to the amount of the debt due and 150% (one hundred and fifty per cent) of the adjusted equity or, (ii) pay to the Intermediary, damages, equivalent to 12 (twelve) months, or balance Agreement Term whichever is less, of charges for its contracted capacity, with the assets being retained by the EVFSP.

Provided further that at the end of three (3) months period from the period mentioned in this Article 10.4.3, this Agreement may be terminated by the Intermediary.

#### 10.5. ***Termination due to Force Majeure***

- 10.5.1. If the Force Majeure Event or its effects continue to be present beyond a period as specified in Article 4.3.2, either Party shall have the right to cause termination of the Agreement. In such an event this Agreement shall terminate on the date of such Termination Notice without any further liability to either Party from the date of such termination.

## 11. **LIABILITY AND INDEMNIFICATION**

### 11.1. ***Indemnity***

11.1.1. The EVFSP shall indemnify, defend, and hold the Intermediary and the Beneficiary harmless against:

- a. any and all third-party claims against the Intermediary or the Beneficiary for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Fleet service provider of any of its obligations under this Agreement; and
- b. any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by the Intermediary or the Beneficiary from third party claims arising by reason of a breach by the EVFSP of any of its obligations under this Agreement, (provided that this Article 11 shall not apply to such breaches by the EVFSP, for which specific remedies have been provided for under this Agreement).

11.1.2. Beneficiary shall indemnify, defend, and hold the EVFSP harmless against:

- a. any and all third-party claims against the Fleet service provider, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Beneficiary of any of their obligations under this Agreement; and
- b. any and all losses, damages, costs, and expenses including legal costs, fines, penalties, and interest ('Indemnifiable Losses') actually suffered or incurred by the EVFSP from third party claims arising by reason of a breach by the Intermediary or the Beneficiary of any of its obligations.

### 11.2. ***Procedure for claiming Indemnity***

#### 11.2.1. ***Third-party claims***

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 11.1.1(a) or 11.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 11.1.1(a) or 11.1.2(a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such a claim. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:
  - i. The Parties choose to refer the dispute before the Arbitrator in accordance with Article 13.3.1  
and
  - ii. the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,

the Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favor of the Indemnified Party.

- b. The Indemnified Party may contest the claim by referring to the Arbitrator for which it is entitled to be Indemnified under Article 11.1.1(a) or 11.1.2(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified Party. However, such Indemnified Party shall not settle or compromise such claim without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

An Indemnifying Party may, at its own expense, assume control of the defense of any proceedings brought against the Indemnified Party if it acknowledges its obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defense, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

**11.3. Indemnifiable Losses**

11.3.1. Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 11.1.1(b) or 11.1.2(b) the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of nonpayment of such losses after a valid notice under this Article 11.3, such event shall constitute a payment default under Article 10.

**11.4. Limitation of Liability**

11.4.1. Except as expressly provided in this Agreement, neither the Fleet service provider nor its/ their respective officers, directors, agents, employees or affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of Beneficiary, the EVFSP or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

11.4.2. Intermediary shall have no recourse against any officer, director, or shareholder of the Beneficiary or any Affiliate of the Beneficiary or any of its officers, directors or shareholders for such claims excluded under this Article. The Beneficiary shall have no recourse against any officer, director or shareholder of the Intermediary, or any affiliate of the Intermediary or any of its officers, directors or shareholders for such claims excluded under this Article.

**11.5. Duty to Mitigate**

11.5.1. The Parties shall endeavor to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 11.

## 12. **ASSIGNMENTS AND CHARGES**

### 12.1. **Assignments**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party, except to the Project lender or lender's representative as security for their debt under the Financing Agreements, other than by mutual consent between the Parties to be evidenced in writing. Such assignment shall be agreed to by Beneficiary subject to the compliance of provisions contained in this Agreement and more specifically to the provisions of Article 4.1 of this Agreement. In no case, such assignment shall be permissible prior to the declaration of COD.

Provided that, the Beneficiary shall permit assignment of any of the Intermediary rights and obligations under this Agreement in favor of the lenders to the EV Fleet Service Provider (EVFSP), if required under the Financing Agreements. Provided that, such consent shall not be withheld if the Intermediary seeks to transfer to any transferee all of its rights and obligations under this Agreement.

The enforcement of the rights and obligation between the Intermediary and the Beneficiary provided in this Agreement shall not be treated as an assignment, but an enforcement of the terms agreed under this Agreement.

### 12.2. **Permitted Charges**

- 12.2.1. The Beneficiary shall not create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement, other than as set forth in Article 12.1 and the Guidelines.

### 13. **GOVERNING LAW AND DISPUTE RESOLUTION**

#### 13.1. **Governing Law**

13.1.1. This Agreement shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes under this Agreement shall be under the jurisdiction of appropriate courts in Bhubaneswar/ Odisha.

#### 13.2. **Amicable Settlement and Dispute Resolution**

- i. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ("Dispute") by giving a written notice (Dispute Notice) to the other Party, which shall contain:
  - a. a description of the Dispute.
  - b. the grounds for such Dispute; and
  - c. all written material in support of its claim.
- ii. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 13.2 (i), furnish:
  - a. Counterclaim and defenses, if any, regarding the Dispute; and
  - b. all written material in support of its defenses and counterclaim.
- iii. Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 13
  - a. if the other Party does not furnish any counterclaim or defense under Article 13
  - b. or thirty (30) days from the date of furnishing counterclaims or defense by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 13.2.
  - c. the Dispute shall be referred for dispute resolution in accordance with Article 13.3

#### 13.3. **Dispute Resolution**

##### 13.3.1. **Dispute Resolution through Arbitration**

- i. If the Dispute arising as per Article 13.2 is not amicably resolved, such Dispute shall be resolved by arbitration under the provisions of the Arbitration and Conciliation Act 1996 as amended from time to time.
- ii. The place of arbitration shall be at Bhubaneswar. The language of the arbitration shall be English.
- iii. The Arbitration Tribunal's award shall be substantiated in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
- iv. The provisions of this Article shall survive the termination of this Agreement for any reason whatsoever.
- v. The award shall be of majority decision.
- vi. Intermediary shall be entitled to co-opt the lenders (if any) as a supporting party in such arbitration proceedings.

#### 13.4. **Parties to Perform Obligations**

13.4.1. Notwithstanding the existence of any Dispute and difference referred to the Arbitration Committee and save as the Arbitration Committee may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

14. **MISCELLANEOUS PROVISIONS**

14.1. ***Amendment***

14.1.1. This Agreement may only be amended or supplemented by a written agreement between the Parties.

14.2. ***Third-party Beneficiaries***

14.2.1. This Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this Agreement.

14.3. ***Waiver***

14.3.1. No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorized representative of such Party.

14.3.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions, and provisions of this Agreement nor time or other indulgence granted by one Party to the other Parties shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

14.4. ***Confidentiality***

14.4.1. The Parties undertake to hold in confidence this Agreement and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:

- a. to their professional advisors;
- b. to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
- c. disclosures required under Law, without the prior written consent of the other Party.

14.5. ***Severability***

14.5.1. The invalidity or unenforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

14.6. ***Notices***

14.6.1. All notices or other communications which are required to be given under this Agreement shall be in writing and in the English language.

14.6.2. If to the Beneficiary, all notices or other communications which are required must be delivered personally or by registered post or facsimile or any other method duly acknowledged to the addresses below:

Address: [●]

Attention: [●]

Email: [●]

Fax. No.: [●]

Telephone No.: [●]

14.6.3. If to Intermediary, all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the address(es) below:

Address: [ [Address of Intermediary](#) ]

Attention: [ [Designation of Intermediary Nodal Officer](#)]  
Email: [ [Email-id of Intermediary Nodal Officer](#)]  
Fax. No.: [ [Fax no. of Intermediary Nodal Officer](#)]  
Telephone No.: [ [Tel. no. of Intermediary Nodal Officer](#)]

- 14.6.4. All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All notices shall be deemed validly delivered upon receipt evidenced by an acknowledgment of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.
- 14.6.5. Any Party may by notice of at least fifteen (15) days to the other Party change the address and/or addresses to which such notices and communications to it are to be delivered or mailed.

**14.7. *Language***

- 14.7.1. All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.
- 14.7.2. If any of the agreements, correspondence, communications, or documents are prepared in any language other than English, the English translation of such agreements, correspondence, communications, or documents shall prevail in matters of interpretation.

**14.8. *Restriction of Shareholders/ Owners' Liability***

- 14.8.1. Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement, shall be restricted to the extent provided in the relevant act in India.

**14.9. *Restriction of Shareholders/ Owners' Liability***

- 14.9.1. Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement, shall be restricted to the extent provided in the relevant act in India.

**14.10. *Taxes and Duties***

- 14.10.1. The EV Fleet Service Provider shall bear and promptly pay all statutory taxes, duties, levies, and cess, assessed/ levied on the Fleet service provider, contractors or their employees that are required to be paid by the Fleet service provider as per the Law in relation to the execution of the Agreement and for supplying power as per the terms of this Agreement.
- 14.10.2. Intermediary and the Beneficiary shall be indemnified and held harmless by the Fleet service provider against any claims that may be made against Beneficiary in relation to the matters set out in Article 14.9.1
- 14.10.3. Intermediary or the Beneficiary shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Fleet service provider by Beneficiary on behalf of Fleet service provider.

**14.11. *Independent Entity***

14.11.1. The Fleet service provider shall be an independent entity performing its obligations pursuant to the Agreement.

14.11.2. Subject to the provisions of the Agreement, the Fleet service provider shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the Fleet service provider or contractors engaged by the Fleet service provider in connection with the performance of the Agreement shall be under the complete control of the Fleet service provider and shall not be deemed to be employees, representatives, contractors of Beneficiary and nothing contained in the Agreement or in any agreement or contract awarded by the Fleet service provider shall be construed to create any contractual relationship between any such employees, representatives or contractors and Beneficiary.

14.11.3. Any change in the shareholding after the expiry of one (1) year after commencement of services can be undertaken under intimation to the Intermediary and not before this period.

14.12. **Compliance with Law**

14.12.1. Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in any rules and regulations made thereunder, such provision of this Agreement shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

14.13. **Breach of Obligations**

14.13.1. The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties further acknowledge that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting party in each case specified under this Agreement.

IN WITNESS WHEREOF the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

For and on behalf of the Intermediary

For and on behalf of the Beneficiary

Name:

Name:

Designation:

Designation:

Address:

Address:

Signature with seal:

Signature with seal:

Witness:

Witness:

1.

1.

2.

2.

**Annexure 1: Details of the location and the type of Electric Cars**