



# eLu EVC Solution Agreement

with

**Site Owner (Party B)**

## **IMPORTANT INFORMATION**

### **Will there be any fees or costs payable by PARTY B under this Agreement?**

The D1 Model EVC Stations and Ancillary Equipment will be Installed at the Premises at no cost to PARTY B. PARTY B will be responsible for ensuring power supply to the D1 Model EVC Stations (see clause 8.1)

### **Is any liability excluded under this Agreement?**

Yes. In respect of Claims generally under this Agreement, the liability of both eLu and PARTY B will be capped at the Maximum Liability Amount specified in Item 11 of Section 1, with some limited exceptions.

In addition, in the event of a Defect in any of the D1 Model EVC Stations or Ancillary Equipment, eLu's liability may, at its election, be limited to the repair or replacement of the defective D1 Model EVC Station or Ancillary Equipment, as applicable (see clause 15.1(c)).

The above limitations of liability are subject to any applicable Laws, including the Australian Consumer Law.

### **Will PARTY B be liable for damage to any of the D1 Model EVC Stations or Ancillary Equipment?**

**PARTY B** is required to take all reasonable measures to protect the D1 Model EVC Stations and Ancillary Equipment from damage or destruction, and to repair any damage if caused by PARTY B or its Personnel (see clause 8.5(b)).

### **Will this Agreement automatically renew?**

Yes, this Agreement will automatically renew for the Renewal Term specified at Item 7 of Section 1 unless either eLu or PARTY B gives the other a notice to terminate by no later than [60] days before the expiry of the Initial Term specified at Item 6 of Section 1 (see clause 3.2).

eLu will send an email reminder to PARTY B about the upcoming renewal and the last day by which it can terminate this Agreement before it is automatically renewed, at least [90] days before the Initial Term expires (see clause 3.2).

### **Is eLu permitted to provide data to a third party in a form that may enable PARTY B to be identifiable by the third party?**

Yes. Both eLu and PARTY B may disclose Confidential Information (which may include personal information of the other party or its Personnel) to their respective third party service providers to the extent necessary to perform its obligations or exercise its rights under this Agreement (see clause 12.2). In these circumstances, it is the responsibility of the party making the disclosure to inform the third party of its obligations of confidentiality under this Agreement and to ensure that the third party treats all Confidential Information disclosed to it in accordance with those obligations.

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**Date:**

**Parties**

(1) eLu Pty Ltd ACN 667 494 171 (eLu)

(2) [INSERT LEGAL ENTITY NAME] ACN [XXX XXX XXX] (PARTY B)

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**Background**

- A. PARTY B is the registered proprietor of the Premises and operates the Business from the Premises.
- B. eLu is a provider of EVC Solutions in Australia.
- C. eLu is PARTY B's preferred provider of, and PARTY B wishes to grant to eLu the exclusive rights to install and operate, EVC Solutions on the Premises, for the benefit of Patrons.
- D. Initially, PARTY B and eLu have agreed to enter into a licence to permit the installation and operation of the D1 Model EVC Stations on the Premises, on the terms and conditions of this Agreement.
- E. It is the mutual intention of the parties that as future generations of EVC Solutions become available to eLu for introduction to the Australian market, eLu will make these options available to PARTY B and PARTY B will first enter into good faith negotiations with eLu respect to the installation and operation of those future models at the Premises.

## Section 1 – Key details

Item	Subject	Details
1.	Notice details of eLu	ACN: 667 494 171 Address: 1 Warehouse Circuit, Yatala QLD 4207 Email: lisa.marsh@eluminaglobal.com Attention: Lisa Marsh
2.	Notice details of PARTY B	Name: [INSERT LEGAL ENTITY NAME] ACN: [XXX XXX XXX] Address: [INSERT ADDRESS FOR NOTICES] Email: [EMAIL CONTACT FOR NOTICES] Attention: [REPRESENTATIVE NAME FOR NOTICES]
3.	Business	Berridge Park
4.	Premises	Hollings Road, Denmark WA 6333
5.	Commencement Date	The date when the last party signed this Agreement
6.	Initial Term	5 years
7.	Renewal Term	5 years
8.	Requisite Authorisations	[insert details]
9.	Installation Target Date	27 March 2026
10.	Charging Fee	\$0.75 per kWh for the peak period (5pm-9pm) \$0.65 per kWh for the off-peak period (9am-5pm, 9pm-9am)
11.	Maximum Liability Amount	\$249,000
12.	Jurisdiction	Queensland, Australia
13.	Electricity Reimbursement	YES
14.	Revenue Split	80% of Net Revenue – eLu 20% of Net Revenue – O&M (eLu) (Net Revenue is total revenue earned from charging minus the Electricity Reimbursement Amount for the corresponding Quarter)

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## **Section 2 – Installation Plan**

### **Part A – EVC Stations**

- One (1) eLumina D1 Model Battery Integrated Electric Vehicle Charging (BIEVC) EVC Station.

For equipment technical specifications and drawings, refer to Appendix 1.

### **Part B – Ancillary Equipment**

- None

### **Part C – Installation**

- Delivery of all equipment listed in Part A will be arranged and paid for by eLu.
- Party B will provide the ancillary goods and/or services specified in Part B.
- Party B agrees to provide reasonable assistance to ensure that someone is available to receive and assist with unloading of the goods at the site when they arrive.
- eLu will complete equipment installation works, commissioning of the products and set up Charge Point Operator (CPO) interface for ongoing operation of the D1 Model EVC Station.
- Party B will provide a suitable 3-phase (5-wire/pin) AC power source for the D1 Model EVC Stations with a continuous power output of between 10kW (16A) and 40kW (63A) and a connection point located as close as practicable to the D1 Model EVC Stations.




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## Section 3 – Specified EVC Station Areas

Proposed Layout – Berridge Park



Legend:

-  eLumina D1 with new concrete pad
-  New Bollard
-  EV charging bay

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## Section 4 – General Terms and Conditions

### 1. DEFINITIONS AND INTERPRETATION

#### 1.0 Definitions

In this Agreement, unless the context requires otherwise, the following definitions apply. Additional terms are defined in the body of these Conditions:

**D1 Model EVC Stations** means the EVC Solutions detailed in Part A of Section 2 and Appendix 1 of this Agreement, including all hardware and necessary supporting equipment and structures.

**Agreement** means the Project Terms and these Conditions.

**Ancillary Equipment** means all other hardware and equipment associated with the D1 Model EVC Stations which are to be installed alongside the D1 Model EVC Stations at the Specified EVC Station Areas, as detailed at Part B of Section 2 and Appendix 1.

**Biodiesel Generator** means an engine-powered generator that runs on biodiesel fuel—a renewable, biodegradable fuel e.g. Canola oil.

**Australian Consumer Law** means the Australian Consumer Law contained at Schedule 2 of the *Competition and Consumer Law 2010* (Cth).

**Authorisation** means any licence, consent, approval, permit, registration, accreditation, certification or other authorisation given or issued by any Government Authority or any other person.

**Business** has the meaning given in Item 3 of Section 1.

**Business Day** means:

- (a) for the purposes of clause 5.2(a)(ii), a day which is not a Saturday, Sunday, a bank holiday or a public holiday in the Jurisdiction;
- (b) for the purpose of sending or receiving a Notice, a day which is not a Saturday, Sunday, a bank holiday or a public holiday in the city where the Notice is received; and
- (c) for all other purposes, a day which is not a Saturday, Sunday, a bank holiday or a public holiday in Sydney, Australia.

**Business Hours** means from 9.00am to 5.00pm on a Business Day.

**Charging Fee** has the meaning given in Item 120 of Section 1.

**Claim** means a claim, notice, demand, action, litigation or other proceeding under or in respect of this Agreement.

**Commencement Date** has the meaning given in Item 5 of Section 1.

**Conditions** means the general terms and conditions set out in this Section 4 of this Agreement.

**Consequential Loss** means, in respect of a party:

- (a) any loss, damage or expense suffered by that party that cannot reasonably be considered to arise naturally from a breach or event, fact, matter or circumstance, or to have been in the contemplation of the parties at the time of entry into this Agreement as a probable result of a breach or event, fact, matter or circumstance; or
- (b) any and all special, indirect, exemplary or punitive liabilities and any and all liability relating to loss of profit, revenue, use, goodwill, production or loss of actual or potential business opportunity in relation to a breach or event, fact, matter or circumstance, even if such liability could reasonably be considered to arise naturally from that breach or the event, fact, matter or circumstance or could reasonably be considered to have been in the contemplation of the parties at the time the parties entered into this Agreement as a probable result of that breach or the event, fact, matter or circumstance.

**Defect** means, in respect of any D1 Model EVC Station or Ancillary Equipment, any non-conformance of the relevant item with the specifications set out in Part A or B of Section 2 or Appendix 1 (as applicable), or any failure of the relevant item to function reliably and in the manner for which it was designed.

**Dispute** has the meaning given in clause 11(a).

**Electricity Reimbursement Amount** means, in respect of a Quarter, the total amount paid by PARTY B to its electricity provider for electricity used by the EVC Stations and Ancillary Equipment in that Quarter, as calculated in accordance with clause 7.1(b).

**Encumbrance** means a mortgage, charge, pledge, lien, hypothecation, title retention arrangement, other security interest (including as defined in the *Personal Property Securities Act 2009* (Cth)) or other third party interest.

**EV Charging Bays** means the parking spaces adjacent to each of the D1 Model EVC Stations, which are required to be reserved for use by electric vehicles pursuant to clause 8.5(d), as illustrated in Section 3.

**EVC Solution** means any electric vehicle charging solution, including any charging station, charging system or other facility designed to enable the charging of electric vehicles.

**Force Majeure Event** means a circumstance beyond the reasonable control of the parties (other than the payment of money) which results in a party being unable to observe or perform an obligation under this Agreement, including:

- (a) natural disasters, lightning strikes, earthquakes, floods, storms, explosions and fires;
- (b) epidemics and pandemics and any restrictions imposed by any Government Authority in connection therewith;
- (c) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
- (d) strikes, blockades and analogous industrial actions.

**Go-Live Date** means the first date on which each D1 Model EVC Station will become fully operational, as specified in the Completion Notice given by eLU to PARTY B pursuant to clause 4.1(d).

**Government Authority** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any law society or self-regulated body responsible for the regulation of any legal profession) in Australia (whether federal, state or local) or any other part of the world.

**Initial Term** has the meaning given in Item 6 of Section 1.

**Insolvency Event** means any of the following in relation to a person:

- (a) the person is (or states that the person is) unable to pay all of the person's debts as they fall due;
- (b) the person stops or suspends, or threatens to stop or suspend, the payment of all or a class of the person's debts;
- (c) the person is presumed, deemed, declared or taken to be insolvent or bankrupt;
- (d) a receiver, manager, trustee for creditors, liquidator, administrator or other similar controller, or insolvency or bankruptcy official is appointed in respect of the person or any of the person's property, assets or estate;
- (e) the person is subject to or party to any assignment, moratorium composition, or other arrangement (including a scheme of arrangement) with any of its creditors or is protected from creditors under any statute;

(f) an application or order is made, resolution passed, meeting convened, or any other action taken, in each case in connection with the person, which is preparatory to or could result in any of (a) to (e) above; and

(g) without limiting any of the above, the person is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand, is the subject of an event described in section 459C(2) or section 585 of the Corporations Act (or makes a statement from which it can be reasonably deduced the person is so subject), is wound up or dissolved or an application or order is made, or a resolution passed, for the winding up or dissolution of the person,

and includes something having a substantially similar effect to any of the above happening in connection with that person under the Laws of any jurisdiction.

**Installation** means the installation of the D1 Model EVC Stations and Ancillary Equipment at the Specified EVC Station Areas in accordance with the Installation Plan, including any structural, construction or specialised electrical works.

**Installation Plan** means the Installation Plan at Section 2 of this Agreement

**Installation Target Date** has the meaning given in Item 9 of Section 1.

**Intellectual Property** means all intellectual and industrial property rights, conferred by statute, at common law, in equity or otherwise, including copyright and neighbouring rights, all rights in relation to inventions, patents, patent applications, plant varieties, registered and unregistered trademarks, registered and unregistered designs, business and domain names, social media handles and content, know-how (being the body of knowledge, technical expertise, experience and skills, confidential processes and technical and confidential information acquired by a person in the design, development, manufacturing and marketing of a product or service), trade secrets and confidential information, and the goodwill and reputation associated with such.

**Jurisdiction** has the meaning given in Item 12 of Section 1.

**Law** means any applicable law, including any rule of common law, principle of equity, statute, regulation, proclamation, ordinance, by-law, rule, regulatory principle and requirement, mandatory code of conduct, mandatory standard, writ, order, injunction and judgement.

**Maximum Liability Amount** has the meaning given in Item 11 of Section 1.

**Loss** means any damage, loss, cost, charges or expense incurred by the party concerned.

**Notice** has the meaning given in clause 17.1.



**O&M Manual** refers to the operations and maintenance manual attached to Appendix 2 of this Agreement.

**Patrons** means patrons of the Business and other users of the Premises.

**Permitted Use** means:

- (e) the Installation, operation, testing and maintenance of the D1 Model EVC Stations and Ancillary Equipment; and
- (f) the supply to Patrons of electrical vehicle charging services and facilities through the operation of the D1 Model EVC Stations and any other services and facilities available from the software applications associated with the D1 Model EVC Stations.

**Personnel** means, in respect of a party, any of its officers, employees, consultants, suppliers, contractors, subcontractors and agents and any other persons authorised by it.

**Pre-Existing Materials** means any material, document, data, technology or Intellectual Property which is pre-existing or created independently of this Agreement which a party makes available for the performance of its obligations under this Agreement.

**Premises** has the meaning given in Item 4 of Section 1.

**Project Terms** means the terms and information set out in Sections 1 to 3 and Appendix 1 (inclusive) of this Agreement.

**Quarter** means each quarter or part of a quarter of a year ending on 31 March, 30 June, 30 September or 31 December, during the Term commencing on or after the Go-Live Date.

**Renewal Term** means the period specified in Item 7 of Section 1, commencing on the day immediately following the expiry of:

- (a) in respect of the first Renewal Term, the Initial Term; and
- (b) in respect of any other Renewal Term, the immediately preceding Renewal Term.

**Requisite Authorisations** means all Authorisations necessary to permit the Installation of the D1 Model EVC Stations at the Specified EVC Station Areas, including those Authorisations specified in Item 8 of Section 1.

**Revenue Split** has the meaning given in clause 7.1(e).

**Specified EVC Station Areas** means the locations on the Premises where the D1 Model EVC Stations are to be installed, as specified at Section 3.

**Term** means the Initial Term and, if clause 3.2 applies, each Renewal Term.

**Termination Provisions** means each of clauses 3.2(a), 4.1(e), 10.4 and 13.1, and **Termination Provision** means any of them.

## 1.1 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa and a gender includes other genders;
- (b) other grammatical forms of a defined word or expression have a corresponding meaning;
- (c) unless otherwise specified, a reference to a clause is to a clause of these Conditions, and a reference to any Schedule or Appendix is to a schedule or appendix to this Agreement and a reference to this Agreement includes any such Schedule and Appendix;
- (d) a reference to a document or agreement, includes the document or agreement as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to Sydney, Australia time;
- (g) a reference to a year (other than a financial year) or a month means a calendar year or calendar month respectively;
- (h) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (i) a reference to a person includes a natural person, partnership, firm, body corporate, trust, joint venture, association, governmental or local authority or agency or other entity;
- (j) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (k) any authorities, associations, bodies and entities whether statutory or otherwise will, in the event of such authority, association, body or entity ceasing to exist or being reconstituted, replaced or the powers or functions thereof being transferred to or taken over by any other authority, association, body or entity, be deemed to refer respectively to the authority, association, body or entity established, constituted or substituted in lieu thereof which exercises substantially the same powers or functions;

- (l) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; and
- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

## 1.2 Headings

Headings are for ease of reference only and do not affect interpretation.

## 1.3 Inconsistency

In the event of any conflict or inconsistency between these Conditions and the Project Terms, the Project Terms will take precedence.

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## 2. PREFERRED PROVIDER

### 2.1 Grant of rights

- (a) PARTY B grants to eLu the exclusive rights to Install, operate and maintain, electric vehicle charging stations on the Premises, for the benefit of patrons of the Business and other users of the Premises, on the terms and conditions of this Agreement.
- (b) PARTY B acknowledges and agrees that it is the intention of PARTY B to collaborate with eLu as its preferred provider of current and future generations of electric vehicle charging stations, on a long-term basis, and that eLu enters into this Agreement in reliance on such intent.
- (c) PARTY B further agrees that eLu may describe itself as PARTY B's preferred provider of electric vehicle charging stations, to actual and prospective commercial partners and customers of eLu, other third parties and the public generally, including in written and/or visual mediums of communication or advertising.

### 2.2 Non-exclusivity

Nothing in this Agreement is intended to prevent eLu from entering into agreements for the installation and operation of electric vehicle charging stations with any third parties.

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## 3. TERM

### 3.1 Initial Term

This Agreement will commence on the Commencement Date and will continue until the end of the Term, unless extended by agreement of the parties in writing or terminated earlier in accordance with the Termination Provisions.

### 3.2 Renewal after Initial Term

- (a) Without limiting the parties' rights under the Termination Provisions, this Agreement automatically renews, at the end of the Initial Term, for successive Renewal Terms, unless either party gives Notice of termination of this Agreement to the other party in writing, no more than 90 days and no less than 60 days prior to the commencement of the next Renewal Term.
- (b) Unless Notice of termination of this Agreement is given within the period specified in clause 3.2(a), this Agreement will remain on foot for the entirety of the next Renewal Term, unless terminated earlier in accordance with a Termination Provision.
- (c) Not less than 90 days prior to the end of the Initial Term and each Renewal Term, eLu will send an email Notice to PARTY B, specifying the last date by which PARTY B may terminate this Agreement pursuant to clause 3.2(a). For the avoidance of doubt, failure of eLu to give notice in accordance with this clause 3.2(c) will not affect the operation of the automatic renewal process contemplated in clauses 3.2(a) and 3.2(b).

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## 4. EVC SOLUTIONS

### 4.1 Current D1 Model EVC Stations

- (a) Subject to clause 4.1(b), eLu agrees to Install, operate and maintain the D1 Model EVC Stations on the Premises on the terms and conditions of this Agreement.
- (b) eLu's obligation to Install the D1 Model EVC Stations under this Agreement is subject to and conditional upon eLu having received, on or before the Installation Target Date, all Requisite Authorisations on terms and conditions satisfactory to eLu.
- (c) Subject to receipt of all Requisite Authorisations on terms and conditions satisfactory to it, eLu will undertake the Installation in each Specified EVC Station Area in accordance with the Installation Plan.
- (d) eLu will promptly notify PARTY B in writing when the Installation works at each Specified EVC Station Area have been completed and each D1 Model EVC Station is ready for use by Patrons (**Completion Notice**). The D1 Model EVC Stations will be fully operational on and from the date specified in the Completion Notice as the "Go-Live Date".
- (e) If, by the Installation Target Date, eLu has not received all Requisite Authorisations on terms and conditions satisfactory to it, either party

may, subject to complying with its obligations under clause 6, terminate this Agreement by Notice to the other party.

- (f) Nothing in this Agreement grants any legal or equitable interest in the D1 Model EVC Stations or the Ancillary Equipment to PARTY B. Notwithstanding anything else, eLu has and retains absolute legal and beneficial title to and ownership of the D1 Model EVC Stations and the Ancillary Equipment.

#### 4.2 Future EVC Solutions

- (a) eLu will keep PARTY B informed about future generations of EVC Solutions, as and when they become available to eLu for introduction to the Australian market.
- (b) eLu may, from time to time, make a proposal to PARTY B for the installation and operation of additional or replacement EVC Solutions on the Premises (**Upgrade Proposal**).
- (c) PARTY B grants eLu the first right to present any Upgrade Proposal to PARTY B and to negotiate with PARTY B the terms and conditions upon which such Upgrade Proposal will be implemented (**Upgrade Terms**).
- (d) PARTY B will, in good faith:
  - (i) consider any Upgrade Proposal made by eLu; and
  - (ii) negotiate the Upgrade Terms with eLu.
- (e) Without limiting clauses 4.2(c) and 4.2(d) or any other provision of this Agreement:
  - (i) if PARTY B wishes to install additional or replacement EVC Solutions on the Premises, PARTY B will first submit a request to eLu for an Upgrade Proposal and consider such Upgrade Proposal (if made by eLu, at its absolute discretion) before approaching any third party for an expression of interest, offer or proposal; and
  - (ii) if PARTY B receives any expression of interest, offer or proposal from a third party for the installation and operation of additional or replacement EVC Solutions on the Premises, PARTY B will give eLu the opportunity to submit an Upgrade Proposal (or revised Upgrade Proposal) to PARTY B to match or better that third party's pricing and/or terms (as applicable) for the same or similar EVC Solution (if eLu so chooses, in its absolute discretion).
- (f) If:
  - (i) eLu declines to submit an Upgrade Proposal to PARTY B pursuant to a request made by PARTY B under clause 4.2(e); or

- (ii) having received and considered an Upgrade Proposal (or revised Upgrade Proposal, if applicable) from, and negotiated the Upgrade Terms, with eLu in accordance with clauses 4.2(d) and 4.2(e)(ii), PARTY B is unable to reach agreement with eLu on the Upgrade Terms within 60 Business Days after receipt of the Upgrade Proposal or revised Upgrade Proposal (as applicable) (**Unaccepted Upgrade Proposal**),

PARTY B may thereupon approach and enter into an agreement for the installation and operation of EVC Solutions on the Premises with a third party [provided such agreement is not less favourable overall to PARTY B than the terms of this Agreement or the Unaccepted Upgrade Proposal].

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## 5. SPECIFIED EVC STATION AREAS

### 5.1 Licence to enter and use

- (a) Without limiting clause 2.1(a), PARTY B grants eLu an exclusive licence during the Term to enter upon the Premises and to use the Specified EVC Station Areas for the Permitted Use (**Licence**).
- (b) The Licence includes the right of eLu and any of its Personnel to enter upon the Premises from time to time throughout the Term with such vehicles, plant and equipment as necessary to undertake installation or maintenance or otherwise perform its obligations under this Agreement.
- (c) The rights granted to eLu under the Licence are contractual only and do not confer upon eLu any right to exclusive possession or occupancy of, or create any form of tenancy or other right, estate or interest (other than the right of a mere licensee) in or to, the Premises or any of the Specified EVC Station Areas.

### 5.2 Assistance

- (a) PARTY B will provide all assistance reasonably required by eLu to facilitate the efficient completion of the installation and the ongoing operation of the D1 Model EVC Stations, including:
  - (i) taking all steps necessary to comply with the terms and conditions of each Requisite Authorisation, and refraining from engaging in any conduct that may result in a breach of any such terms and conditions;
  - (ii) providing, and ensuring that appropriate Personnel of PARTY B is present at the Premises at all times during Business Hours and at reasonable times requested by eLu in advance outside of Business Hours to provide eLu and its Personnel with, as required:

(A) entry into the Premises;

if requested by and in consultation with eLu.

(B) access to the Specified EVC Station Areas and any other areas of the Premises reasonably required by eLu to perform its obligations under this Agreement; and

(C) access to the electrical networks on the Premises; and

(iii) ensuring that appropriate security measures and procedures are in place to enable the D1 Model EVC Stations to be safely and readily accessed and used by all Patrons and other parties.

(b) PARTY B agrees that it will not engage in conduct that may interfere with or prejudice the proper exercise by eLu of its rights under this Agreement or the proper performance by eLu of its obligations under this Agreement.

### 5.3 Right of entry

PARTY B and its Personnel may, at all reasonable times, access the Specified EVC Station Areas (or any part thereof) for the purpose of inspecting their state and condition to ensure compliance with any Law affecting the Premises, and may, after giving reasonable notice to eLu, carry out any other works that PARTY B considers necessary or desirable, including to the power, utility or other services provided to the Specified EVC Station Areas.

## 6. REQUISITE AUTHORISATIONS

(a) eLu will be responsible for applying for all Requisite Authorisations.

(b) eLu will promptly prepare and submit with the relevant Government Authority, an application for each Requisite Authorisation (each, an **Application**).

(c) PARTY B will provide all reasonable assistance to eLu in applying for the Requisite Authorisations, including:

(i) providing its consent to any Application as registered proprietor of the Premises;

(ii) granting access to eLu and any of its Personnel and contractors to the Premises, for the purpose of preparing any Application;

(iii) providing such information, documents and other materials in relation to PARTY B or the Premises as eLu or any Government Authority may require in support of or relation to any Application; and

(iv) communicating with Government Authorities in relation to any Application,

## 7. QUARTERLY PAYMENTS

### 7.1 Payments

(a) In consideration for the rights granted by PARTY B to eLu under and the performance by PARTY B of its obligations in accordance with this Agreement, eLu will pay to PARTY B:

(i) the Revenue Split; and

(ii) the Electricity Reimbursement Amount,

in respect of each Quarter, subject to and conditional upon the successful completion of Installation and the EVC Stations becoming fully operational in accordance with clause 4.1(d). Payment of the Electricity Reimbursement Amount will only be required if Item 13 of Section 1 has been selected as "YES".

(b) Subject to clause 7.1(a), in respect of each Quarter, the Electricity Reimbursement Amount will be calculated by multiplying the total electricity usage of each EVC Station (in kWh) during that Quarter, as measured in accordance with clause 7.1(d), by the applicable electricity charge rate charged to PARTY B by its electricity provider, as specified in the Electricity Billing Information provided by PARTY B for the relevant Quarter pursuant to clause 7.1(d).

(c) For the purposes of this Agreement, the electricity usage of each EVC Station as measured and recorded by the electricity meter installed by eLu at each Specified EVC Station Area for that purpose, will be conclusive evidence of that fact.

(d) PARTY B must promptly provide to eLu, in respect of each Quarter, such documentation as reasonably required by eLu to calculate the Electricity Reimbursement Amount for that Quarter in accordance with clause 7.1(b), including the applicable electricity charge rates charged to PARTY B by its electricity provider in respect of all time periods during the relevant Quarter (**Electricity Billing Information**).

(e) For each Quarter, revenue generated from the use of the D1 Model EVC Stations by Patrons will be allocated to the parties as specified in Item 14 of Schedule 1 (**Revenue Split**). eLu does not provide any guarantee about the amount of revenue that may be generated from use of the D1 Model EVC Stations by Patrons or the value of the Revenue Split during the Term.

(f) The Charging Fee for use of the EVC Stations is specified in Item 10 of Section 1. eLu reserves the right to vary this fee from time to time in response to changes in business or operating circumstances, including but not

limited to electricity costs, maintenance expenses, or regulatory requirements. Any changes to the charging fee will be communicated in writing to Party B at least 14 days prior to implementation.

## 7.2 Payment

eLu will pay to or as directed by PARTY B the Electricity Reimbursement Amount and the Revenue Split due for each Quarter, within 20 Business Days after the end of the relevant Quarter.

## 7.3 GST

Unless otherwise expressly stated in this Agreement, payments referred to in this Agreement are expressed on a GST-exclusive basis. If any taxable supply made by eLu under this Agreement is subject to GST, PARTY B may, in addition to the consideration for the supply, recover an additional amount from eLu on account of GST. The additional amount payable by eLu under this clause 7.3 is equal to the consideration payable to the supplier for the relevant supply multiplied by the prevailing GST rate and is, subject to PARTY B providing a tax invoice, payable at the same time and in the same manner as the consideration for the supply to which the additional amount relates. Except where the context suggests otherwise, terms used in this clause 7.3 have the meanings given under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any regulations made under that Act.

# 8. ONGOING OBLIGATIONS

## 8.1 Power capacity

PARTY B acknowledges and agrees that continual and unfettered access to electrical power is critical to the operation of the D1 Model EVC Stations, and that, to the extent it is within its power to do so, it will:

- (a) ensure that the D1 Model EVC Stations and the Specified EVC Station Areas have continued and unfettered access to and supply of electrical power at all times at the requisite capacity levels specified in Part C of Section 2 (**Requisite Power Supply**);
- (b) use its best endeavours to minimise any disruption to the Requisite Power Supply, including paying all electrical power bills as and when they fall due;
- (c) not, and will procure that its Personnel do not, do or omit to do anything that may result in any disruption to the Requisite Power Supply; and
- (d) promptly notify eLu of any scheduled electrical power outages that may affect the D1 Model EVC Stations and/or the Specified EVC Station Areas, as and when it is notified by its electricity provider.

## 8.2 Obligation to notify of risks

Each party will promptly notify the other party upon becoming aware of any:

- (a) Defect, damage or destruction in relation to:
  - (i) any D1 Model EVC Station, Ancillary Equipment or Specified EVC Station Area; or
  - (ii) any other part of the Premises, to the extent that any such Defect, damage or destruction may have consequential effects on any D1 Model EVC Station, Ancillary Equipment or Specified EVC Station Areas or the ability of either party to perform its obligations under this Agreement; or
- (b) circumstances likely to cause any risk to any D1 Model EVC Station, Ancillary Equipment or Specified EVC Station Area, the Premises or any person.

## 8.3 Further Installation

If eLu determines that further Ancillary Equipment is required to be installed in a Specified EVC Station Area to ensure the functional and efficient operation of the relevant D1 Model EVC Station (**Further Installation**), it will notify PARTY B of the proposed Further Installation and the parties agree to work together in good faith to arrange for the completion of the Further Installation within a reasonable time.

## 8.4 General obligations on eLu

During the Term, eLu agrees that it will:

- (a) only use the Specified EVC Station Areas for the Permitted Use;
- (b) Ensure the D1 Model EVC Stations and ancillary equipment are maintained and routinely inspected in accordance with the O&M Manual(s);
- (c) comply with PARTY B's reasonable directions in connection with access to and use of the Specified EVC Station Areas and other areas of the Premises;
- (d) make good any damage to any part of the Specified EVC Station Areas or the Premises caused by eLu or its Personnel;
- (e) if requested by PARTY B, remove any of its materials which are not wholly inside the Specified EVC Station Areas or are not permitted under clause 9;
- (f) not leave any rubbish or waste materials in or around the Specified EVC Station Areas; and
- (g) maintain appropriate insurance cover in respect of its business and insurable business assets.

## 8.5 General obligations on PARTY B

During the Term and without limiting its obligations under clause 5.2, PARTY B agrees that it will:

- (a) keep and maintain the Specified EVC Station Areas to at least the same standard as it customarily maintains the other parking areas in the Premises, namely:
  - (i) in good repair and condition except for fair wear and tear;
  - (ii) clean, tidy and free of vermin and pests; and
  - (iii) appropriately secure and safe from unauthorised interference from third parties (including reasonable precautions to protect the Specified EVC Station Areas from graffiti and vandalism);
- (b) take all reasonable measures to protect D1 Model EVC Stations and Ancillary Equipment from damage or destruction, including repairing any damage caused by PARTY B or its Personnel;
- (c) ensure that the Specified EVC Station Areas and D1 Model EVC Stations are safely and readily accessible to all Patrons, eLu and eLu's Personnel, subject to the terms of this Agreement;
- (d) ensure that the EV Charging Bays for each Specified EVC Station Areas (as illustrated in Section 3) are always reserved and made available for use by Patrons as parking spaces for electric vehicles; and
- (e) not place permanent fixtures or other obstructions in the Specified EVC Station Areas or EV Charging Bays without the prior written consent of eLu;
- (f) if any property or equipment of a non-permanent nature is installed by PARTY B in or around the Specified EVC Station Areas or EV Charging Bays, and eLu:
  - (i) reasonably believes that such property or equipment is affecting or has the potential to affect the operation or maintenance of any D1 Model EVC Station or Ancillary Equipment; and
  - (ii) requests that such property or equipment be removed,

PARTY B shall promptly remove such property or equipment; and
- (g) comply with all applicable Laws affecting or relating to the use of the Specified EVC Station Areas and with all applicable rules and requirements imposed by any Government Authority having jurisdiction or authority over or in respect of the Specified EVC Station Areas.

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## 9. SIGNAGE

### 9.1 Signage at Specified EVC Station Areas

eLu may display and affix any signs in or around the Specified EVC Station Areas (but in any case, within the Premises) as specified in Section 3 or as otherwise reasonably necessary to direct Patrons to the Specified EVC Station Areas to use the D1 Model EVC Stations or to comply with the terms and conditions of any Requisite Authorisation or applicable Law in respect of EVC Solutions.

### 9.2 Responsibility for signage

- (a) eLu will be solely responsible for all costs and expenses incurred in the creation and display of any signage in the Specified EVC Station Areas or otherwise on the Premises.
- (b) eLu will, at its own cost, obtain any Authorisations required to erect or display signage in the Specified EVC Station Areas or otherwise on the Premises.

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## 10. FORCE MAJEURE

### 10.1 Notice

If either party is prevented from or impeded in performing any of its obligations under this Agreement due to a Force Majeure Event (**Affected Party**), it will promptly give Notice to the other party stating the circumstances constituting the Force Majeure Event and the extent and likely duration of those circumstances.

### 10.2 Suspension

If an Affected Party gives a Notice under clause 10.1, the relevant obligations of the Affected Party under this Agreement will be suspended for as long as the Force Majeure Event continues.

### 10.3 Obligations

If a Force Majeure Event occurs, the Affected Party will:

- (a) make every reasonable effort to minimise the effects of the Force Majeure Event; and
- (b) promptly resume performance of its obligations under this Agreement as soon as reasonably possible after removal of the Force Majeure Event.

### 10.4 Termination

If a Force Majeure Event occurs and continues for a period of [6] months, or if there is no reasonable possibility that such event will be cured within a [6] month period, then either party will be entitled to terminate this Agreement immediately by Notice to the other party.

---

## 11. DISPUTE RESOLUTION

- (a) If a dispute arises out of or in relation to this Agreement (**Dispute**), the parties must not commence legal proceedings in relation to the Dispute unless and until they have complied with this clause 11.
- (b) If any Dispute arises, the party claiming that a Dispute has arisen will provide Notice to the other party, giving details of the Dispute (**Dispute Notice**).
- (c) During the 10 Business Day period immediately after a Dispute Notice is given (or such longer period agreed to in writing by the parties) (**Initial Resolution Period**), each party agrees that it will use its best efforts to attempt to resolve the Dispute.
- (d) If the parties are unable to resolve the Dispute by mutual negotiation during the Initial Resolution Period, the parties will refer the Dispute for mediation administered by the Australian Disputes Centre (**ADC**) before having recourse to arbitration or litigation. The mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC (**Guidelines**). The terms of the Guidelines are hereby deemed incorporated into this Agreement.
- (e) Nothing contained in this clause 11 will:
  - (i) deny any party the right to seek injunctive or urgent relief from an appropriate court where failure to obtain such relief would cause irreparable damage to the party concerned; or
  - (ii) apply where a party is entitled under this Agreement to immediately terminate this Agreement.

---

## 12. CONFIDENTIALITY

### 12.1 Use and disclosure of Confidential Information

A party (in this clause 12, the **receiving party**) which receives Confidential Information of another party (in this clause 12, the **disclosing party**) agrees that it will not:

- (a) use any of the disclosing party's Confidential Information except to the extent necessary for the receiving party to exercise its rights and perform its obligations under or in connection with this Agreement; or
- (b) disclose any of the disclosing party's Confidential Information except in accordance with clauses 12.2 or 12.3.

### 12.2 Disclosures to Personnel

The receiving party may disclose Confidential Information to its Personnel and suppliers (including third party service providers) if:

- (a) the disclosure is necessary to enable the receiving party to perform its obligations or to exercise its rights under this Agreement;
- (b) before the disclosure, the receiving party informs the relevant Personnel or supplier of the receiving party's obligations in relation to the disclosing party's Confidential Information under this Agreement; and
- (c) the receiving party ensures that any person to whom Confidential Information is disclosed under this clause 12.2 keeps the Confidential Information confidential and does not use it other than as expressly permitted under clause 12.2(a).

### 12.3 Disclosures required by Law

- (a) Subject to clause 12.3(b), the receiving party may disclose Confidential Information that the receiving party is required to disclose:
  - (i) by Law or by order of any court or tribunal of competent jurisdiction; or
  - (ii) by any Government Authority.
- (b) If the receiving party is required to make a disclosure under clause 12.3(a), the receiving party will:
  - (i) to the maximum extent possible, notify the disclosing party immediately that the receiving party anticipates that it may be required to disclose any of the disclosing party's Confidential Information;
  - (ii) consult with and follow any reasonable directions from the disclosing party to minimise disclosure; and
  - (iii) if disclosure cannot be avoided, only disclose Confidential Information to the extent necessary to comply with the relevant requirement.

### 12.4 Receiving party's return or destruction of documents

On termination of this Agreement, the receiving party will immediately:

- (a) deliver to the disclosing party all documents and other materials containing, recording or referring to Confidential Information of the disclosing party; and
- (b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information of the disclosing party,

which are in the possession, power or control of the receiving party, except to the extent any Confidential Information must be retained for the purpose of compliance with applicable Law, in which case the receiving party must only retain one copy of such Confidential Information and continue to treat such information as Confidential Information and to protect such information in accordance with this Agreement.

---

## 13. TERMINATION

### 13.1 Termination for cause

Either party (**non-defaulting party**) may immediately terminate this Agreement by Notice to the other party (**defaulting party**) if:

- (a) the defaulting party breaches any material provision of this Agreement and does not rectify that breach within 30 days after receiving Notice from the non-defaulting party to do so, or if the breach is incapable of remedy; or
- (b) an Insolvency Event occurs in relation to the defaulting party.

### 13.2 No other rights of termination

Each party acknowledges and agrees that they shall have no right to terminate this Agreement other than as expressly contemplated by and in accordance with a Termination Provision.

### 13.3 Consequences of termination or expiry

Upon termination of this Agreement for any reason or the expiry of the Term:

- (a) PARTY B is entitled to payment of all accrued but outstanding Revenue Split and Electricity Reimbursement Amount payments in respect of any Quarter up to and including the date of termination or expiry;
- (b) eLu will promptly remove the D1 Model EVC Stations and all Ancillary Equipment that is not affixed to the Specified EVC Station Areas and, at the election of PARTY B, either:
  - (i) make good the Specified EVC Station Areas by removing all infrastructure that was constructed or installed as part of the EVC Station installation and reinstating the Specified EVC Station Areas to a reasonable condition;
  - (ii) pay to PARTY B an amount equal to the reasonable cost of removal and reinstatement of the Specified EVC Station Area in accordance with clause 13.3(b)(i) above; or
  - (iii) leave in place any fixtures (other than the D1 Model EVC Stations) and infrastructure that was constructed or installed as part of the Installation;

- (c) PARTY B agrees to provide all reasonable assistance to eLu in discharging its obligations under clause 13.3(b), but for the avoidance of doubt, ownership of the D1 Model EVC Stations and all Ancillary Equipment (except any Ancillary Equipment affixed to the ground that PARTY B has elected for eLu to leave in place under clause 13.3(b)(iii)) remains with eLu at all times and PARTY B must not, and must not allow any other person to, deal with this property;

- (d) each party will immediately cease using the other party's Confidential Information and return or destroy all Confidential Information of the other party in accordance with clause 12.4;

- (e) each party will be released from its further obligations under this Agreement, except for those obligations which are expressed to survive or by their nature are intended to survive termination or expiry of this Agreement; and

- (f) each party retains the rights or remedies it has against the other party in respect of any breach of this Agreement occurring before termination or expiry.

### 13.4 Survival

The provisions of clauses 7 (Quarterly Payments), 10 (Force Majeure), 11 (Dispute Resolution), 12 (Confidentiality), 14 (Intellectual Property), 15 (Limitation of Liability), 16 (Warranties), 17 (Notices) and 18 (General) and any other clause which by its nature is intended to survive termination or expiry of this Agreement, will survive termination or expiry of this Agreement.

---

## 14. INTELLECTUAL PROPERTY

- (a) Unless expressly stated to the contrary, nothing in this Agreement constitutes a transfer or assignment of any Intellectual Property.
- (b) All Intellectual Property in any Pre-Existing Materials remain vested in the person that owns the Intellectual Property at the Commencement Date.
- (c) All Intellectual Property created, developed, conceived or otherwise brought into existence by eLu in the course of performing or arising out of the performance of its obligations under this Agreement (**Developed IP**) are owned by and vest in eLu immediately upon their creation.
- (d) To the extent PARTY B has any right, title or interest in any jurisdiction, or any right to be assigned any right, title or interest in any jurisdiction, in any Developed IP, PARTY B hereby unconditionally and irrevocably transfers and assigns to eLu absolutely and beneficially the whole of PARTY B's right, title and interest to eLu.



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## 15. LIMITATION OF LIABILITY

### 15.1 General

In the event that a Claim is brought by a party, to the maximum extent permitted by Law:

- (a) neither party will be liable to the other party for Loss to the extent that such Loss was caused or contributed to by any act or omission of the other party or its Personnel;
- (b) neither party will be liable to the other party for Consequential Loss; and
- (c) the Liability of eLu in respect of a Claim brought by PARTY B with respect to a Defect arising in the D1 Model EVC Stations or Ancillary Equipment is limited to, at eLu's option, the repair or replacement of the Defective unit.

### 15.2 Maximum liability

- (a) Without limiting clause 15.1 and to the extent permitted by Law, the maximum aggregate Liability of each party under any Claims, whether in contract, equity or tort (including negligence or breach of statutory duty), by statute or otherwise, is limited to the Maximum Liability Amount.
- (b) The limitation in clause 15.2(a) does not apply to the extent that the Liability of a party arises from:
  - (i) fraud, wilful misconduct or gross negligence;
  - (ii) breach of any obligations under any Law;
  - (iii) loss of, damage to or destruction of tangible property; or
  - (iv) personal injury or death.

### 15.3 Mitigation

- (a) Each party agrees that it will do all things and take all actions which are reasonably necessary to mitigate any Loss which arises under this Agreement.
- (b) No party is liable to the other party to the extent that any Loss suffered by the other party is caused or contributed to by a breach of the obligation in clause 15.3(a) immediately above.

---

## 16. WARRANTIES

### 16.1 No exclusion of statutory warranties

Without excluding, restricting or modifying any Liability or warranties that cannot be (or to the extent that they cannot be) excluded, restricted or modified by applicable Law (including, if applicable, any statutory warranties under the Australian Consumer

Law), the parties agree that no other warranties shall be given other than those expressly set out in this clause 16.

### 16.2 Mutual warranties

Each party represents and warrants in favour of the other party that:

- (a) it is a duly incorporated and validly exists under the Laws of the place of its incorporation;
- (b) it has full power and capacity to enter into and perform its obligations under this Agreement in accordance with its terms;
- (c) this Agreement constitutes a valid and legally binding obligation on it and is enforceable against it in accordance with its terms;
- (d) it has taken all corporate and other action required and obtained or been granted all consents, approvals, permissions and authorisations, whether internal or external, necessary for the execution, delivery and performance by it of this Agreement in accordance with its terms;
- (e) the entry into and performance of this Agreement does not cause or result in default under any agreement, undertaking or Encumbrance by which it is bound or which would prevent it from entering into and performing its obligations under and in accordance with the terms and conditions of this Agreement;
- (f) it enters into, delivers and performs this Agreement on its own account and not as trustee for or nominee of any other person; and
- (g) no Insolvency Event has occurred or subsists in respect of it, and no fact, matter, event or circumstance has occurred which is likely to give rise to any such Insolvency Event.

### 16.3 Specific warranties

PARTY B represents and warrants in favour of eLu that PARTY B is the registered proprietor of the Premises and has the unfettered right and entitlement to enter into this Agreement and grant the rights purported to be granted by it to eLu under this Agreement.

### 16.4 Reliance

Each party acknowledges that the other party enters into and performs its obligations under this Agreement in reliance on the truth and accuracy of the representations and warranties given by the first-mentioned party and on such representations and warranties not being misleading or deceptive (including by omission).

---

## 17. NOTICES

### 17.1 Service of notices

A notice, demand, consent, approval or communication under this Agreement (**Notice**):

- (a) must be in writing and in English directed to the recipient's address for notices specified in Item 1 or 2 of Section 1 (as applicable), as varied by any Notice;
- (b) must be hand delivered, left at or sent by prepaid post or facsimile to the recipient's address for notices specified in Item 1 or 2 of Section 1 (as applicable), as varied by any Notice; and
- (c) may be given by an agent of the sender.

### 17.2 Effective on receipt

A Notice given in accordance with clause 17.1 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered or left at the recipient's address, on delivery;
- (b) if sent by prepaid post, the third Business Day after the date of posting, or the fifth Business Day after the date of posting if posted to or from outside Australia); and
- (c) if sent by email, when received by the recipient's email server (whether or not classified as spam) unless the sender receives an automated message that delivery of the email has failed,

but if the delivery or transmission under clause 17.2(a) or (c) is outside Business Hours, the Notice is taken to be received at the commencement of Business Hours after that delivery, receipt or transmission.

### 17.3 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings in relation to this Agreement may be served by any method contemplated by this clause 17 in addition to any means authorised by Law.

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## 18. GENERAL

### 18.1 Alterations

Except where this Agreement expressly permits or states otherwise, this Agreement may be altered only in writing signed by each party.

### 18.2 Approvals and consents

Except where this Agreement expressly permits or states otherwise, a party may, in its discretion, give

conditionally or unconditionally or withhold any approval or consent under this Agreement.

### 18.3 Assignment

A party may only assign this Agreement or a right under this Agreement with the prior written consent of the other party.

### 18.4 Electronic signing and counterparts

- (a) To the extent permitted by Law, this Agreement may be electronically signed.
- (b) Each party consents to this Agreement being electronically signed by or on behalf of a party.
- (c) Where this Agreement is electronically signed by or on behalf of a party, the party warrants and agrees that:
  - (i) the electronic signed has been used to identify the person signing and to indicate that the party intends to be bound by electronic signature; and
  - (ii) they or anyone signing on their behalf has affixed their own electronic signature.
- (d) This Agreement may be signed, including electronically signed, in a number of counterparts which together will constitute one document.
- (e) Each party consents to the exchange of counterparts of this Agreement by delivery by email or such other electronic means as may be agreed by the parties. The parties agree that an electronic or scanned copy of a counterpart that is delivered by email or such other agreed electronic means:
  - (i) is deemed an original counterpart;
  - (ii) is sufficient evidence of the execution of the original; and
  - (iii) may be produced in evidence for all purposes in place of the original.

### 18.5 Costs

Each party will bear its own costs in relation to, and associated with, this Agreement and giving effect to this Agreement.

### 18.6 No merger

Except where this Agreement expressly states otherwise, the rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

### 18.7 Entire agreement

This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

#### **18.8 Further action**

Each party agrees that it will do, at its own expense, everything reasonably necessary to give full effect to this Agreement and the transactions contemplated by it (including executing documents) and to use all reasonable endeavours to cause relevant third parties to do likewise.

#### **18.9 Severability**

If the whole or any part of a provision of this Agreement is invalid or unenforceable in a jurisdiction it must, if possible, be read down for the purposes of that jurisdiction so as to be valid and enforceable. If however, the whole or any part of a provision of this Agreement is not capable of being read down, it is severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

#### **18.10 Enforcement of indemnities**

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

#### **18.11 Survival**

Any indemnity or obligation of confidentiality in this Agreement is independent and survives termination of this Agreement. Any other term which by its nature is intended to survive termination of this Agreement survives termination of this Agreement.

#### **18.12 Attorneys**

Each person who executed this Agreement on behalf of a party declares that he or she has no notice of the revocation or suspension by the grantor or in any other manner of the power of attorney under the authority of which he or she executes this Agreement.

#### **18.13 Waiver**

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise by a party of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

#### **18.14 Relationship**

Except where this Agreement expressly states otherwise, this Agreement does not create a relationship of employment, trust, agency or partnership between the parties.

#### **18.15 Remedies cumulative**

The rights provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this Agreement.

#### **18.16 Governing law**

This Agreement will be governed by and construed in accordance with the Laws for the time being in force in the jurisdiction specified in Item 12 of Section 1 and the parties, by entering into this Agreement, are deemed to have submitted to the non-exclusive jurisdiction of the courts of that State.

#### **18.17 Exercise of rights**

A party may exercise a right, at its discretion and separately or concurrently with another right.

**Executed as an agreement**

**Executed by eLu Pty Ltd ACN 667 494 171** in )  
accordance with section 127 of the )  
*Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary\*

Delete whichever does not apply

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director/company secretary\*

Delete whichever does not apply

**Executed** by Party B in accordance with )  
section 127 of the *Corporations Act 2001* (Cth) )  
by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary\*

Delete whichever does not apply

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director/company secretary\*

Delete whichever does not apply



## Appendix 1

## Appendix 2



# eLu EVC Solution Agreement

with

**Site Owner (Party B)**

## **IMPORTANT INFORMATION**

### **Will there be any fees or costs payable by PARTY B under this Agreement?**

The D1 Model EVC Stations and Ancillary Equipment will be Installed at the Premises at no cost to PARTY B. PARTY B will be responsible for ensuring power supply to the D1 Model EVC Stations (see clause 8.1)

### **Is any liability excluded under this Agreement?**

Yes. In respect of Claims generally under this Agreement, the liability of both eLu and PARTY B will be capped at the Maximum Liability Amount specified in Item 11 of Section 1, with some limited exceptions.

In addition, in the event of a Defect in any of the D1 Model EVC Stations or Ancillary Equipment, eLu's liability may, at its election, be limited to the repair or replacement of the defective D1 Model EVC Station or Ancillary Equipment, as applicable (see clause 15.1(c)).

The above limitations of liability are subject to any applicable Laws, including the Australian Consumer Law.

### **Will PARTY B be liable for damage to any of the D1 Model EVC Stations or Ancillary Equipment?**

**PARTY B** is required to take all reasonable measures to protect the D1 Model EVC Stations and Ancillary Equipment from damage or destruction, and to repair any damage if caused by PARTY B or its Personnel (see clause 8.5(b)).

### **Will this Agreement automatically renew?**

Yes, this Agreement will automatically renew for the Renewal Term specified at Item 7 of Section 1 unless either eLu or PARTY B gives the other a notice to terminate by no later than [60] days before the expiry of the Initial Term specified at Item 6 of Section 1 (see clause 3.2).

eLu will send an email reminder to PARTY B about the upcoming renewal and the last day by which it can terminate this Agreement before it is automatically renewed, at least [90] days before the Initial Term expires (see clause 3.2).

### **Is eLu permitted to provide data to a third party in a form that may enable PARTY B to be identifiable by the third party?**

Yes. Both eLu and PARTY B may disclose Confidential Information (which may include personal information of the other party or its Personnel) to their respective third party service providers to the extent necessary to perform its obligations or exercise its rights under this Agreement (see clause 12.2). In these circumstances, it is the responsibility of the party making the disclosure to inform the third party of its obligations of confidentiality under this Agreement and to ensure that the third party treats all Confidential Information disclosed to it in accordance with those obligations.

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**Date:**

**Parties**

(1) eLu Pty Ltd ACN 667 494 171 (eLu)

(2) [INSERT LEGAL ENTITY NAME] ACN [XXX XXX XXX] (PARTY B)

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**Background**

- A. PARTY B is the registered proprietor of the Premises and operates the Business from the Premises.
- B. eLu is a provider of EVC Solutions in Australia.
- C. eLu is PARTY B's preferred provider of, and PARTY B wishes to grant to eLu the exclusive rights to install and operate, EVC Solutions on the Premises, for the benefit of Patrons.
- D. Initially, PARTY B and eLu have agreed to enter into a licence to permit the installation and operation of the D1 Model EVC Stations on the Premises, on the terms and conditions of this Agreement.
- E. It is the mutual intention of the parties that as future generations of EVC Solutions become available to eLu for introduction to the Australian market, eLu will make these options available to PARTY B and PARTY B will first enter into good faith negotiations with eLu respect to the installation and operation of those future models at the Premises.

## Section 1 – Key details

Item	Subject	Details
1.	Notice details of eLu	ACN: 667 494 171 Address: 1 Warehouse Circuit, Yatala QLD 4207 Email: lisa.marsh@eluminaglobal.com Attention: Lisa Marsh
2.	Notice details of PARTY B	Name: [INSERT LEGAL ENTITY NAME] ACN: [XXX XXX XXX] Address: [INSERT ADDRESS FOR NOTICES] Email: [EMAIL CONTACT FOR NOTICES] Attention: [REPRESENTATIVE NAME FOR NOTICES]
3.	Business	Shire Admin Building
4.	Premises	953 South Coast Hwy, Denmark WA 6333
5.	Commencement Date	The date when the last party signed this Agreement
6.	Initial Term	5 years
7.	Renewal Term	5 years
8.	Requisite Authorisations	[insert details]
9.	Installation Target Date	27 March 2026
10.	Charging Fee	\$0.75 per kWh for the peak period (5pm-9pm) \$0.65 per kWh for the off-peak period (9am-5pm, 9pm-9am)
11.	Maximum Liability Amount	\$249,000
12.	Jurisdiction	Queensland, Australia
13.	Electricity Reimbursement	YES
14.	Revenue Split	80% of Net Revenue – eLu 20% of Net Revenue – O&M (eLu) (Net Revenue is total revenue earned from charging minus the Electricity Reimbursement Amount for the corresponding Quarter)

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## **Section 2 – Installation Plan**

### **Part A – EVC Stations**

- One (1) eLumina D1 Model Battery Integrated Electric Vehicle Charging (BIEVC) EVC Station.

For equipment technical specifications and drawings, refer to Appendix 1.

### **Part B – Ancillary Equipment**

- None

### **Part C – Installation**


- Delivery of all equipment listed in Part A will be arranged and paid for by eLu.
- Party B will provide the ancillary goods and/or services specified in Part B.
- Party B agrees to provide reasonable assistance to ensure that someone is available to receive and assist with unloading of the goods at the site when they arrive.
- eLu will complete equipment installation works, commissioning of the products and set up Charge Point Operator (CPO) interface for ongoing operation of the D1 Model EVC Station.
- Party B will provide a suitable 3-phase (5-wire/pin) AC power source for the D1 Model EVC Stations with a continuous power output of between 10kW (16A) and 40kW (63A) and a connection point located as close as practicable to the D1 Model EVC Stations.

### Section 3 – Specified EVC Station Areas


Proposed Layout – Shire Admin Building



Legend:

 eLumina D1 with new concrete pad

 New Bollard

 EV charging bay

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## Section 4 – General Terms and Conditions

### 1. DEFINITIONS AND INTERPRETATION

#### 1.0 Definitions

In this Agreement, unless the context requires otherwise, the following definitions apply. Additional terms are defined in the body of these Conditions:

**D1 Model EVC Stations** means the EVC Solutions detailed in Part A of Section 2 and Appendix 1 of this Agreement, including all hardware and necessary supporting equipment and structures.

**Agreement** means the Project Terms and these Conditions.

**Ancillary Equipment** means all other hardware and equipment associated with the D1 Model EVC Stations which are to be installed alongside the D1 Model EVC Stations at the Specified EVC Station Areas, as detailed at Part B of Section 2 and Appendix 1.

**Biodiesel Generator** means an engine-powered generator that runs on biodiesel fuel—a renewable, biodegradable fuel e.g. Canola oil.

**Australian Consumer Law** means the Australian Consumer Law contained at Schedule 2 of the *Competition and Consumer Law 2010* (Cth).

**Authorisation** means any licence, consent, approval, permit, registration, accreditation, certification or other authorisation given or issued by any Government Authority or any other person.

**Business** has the meaning given in Item 3 of Section 1.

**Business Day** means:

- (a) for the purposes of clause 5.2(a)(ii), a day which is not a Saturday, Sunday, a bank holiday or a public holiday in the Jurisdiction;
- (b) for the purpose of sending or receiving a Notice, a day which is not a Saturday, Sunday, a bank holiday or a public holiday in the city where the Notice is received; and
- (c) for all other purposes, a day which is not a Saturday, Sunday, a bank holiday or a public holiday in Sydney, Australia.

**Business Hours** means from 9.00am to 5.00pm on a Business Day.

**Charging Fee** has the meaning given in Item 120 of Section 1.

**Claim** means a claim, notice, demand, action, litigation or other proceeding under or in respect of this Agreement.

**Commencement Date** has the meaning given in Item 5 of Section 1.

**Conditions** means the general terms and conditions set out in this Section 4 of this Agreement.

**Consequential Loss** means, in respect of a party:

- (a) any loss, damage or expense suffered by that party that cannot reasonably be considered to arise naturally from a breach or event, fact, matter or circumstance, or to have been in the contemplation of the parties at the time of entry into this Agreement as a probable result of a breach or event, fact, matter or circumstance; or
- (b) any and all special, indirect, exemplary or punitive liabilities and any and all liability relating to loss of profit, revenue, use, goodwill, production or loss of actual or potential business opportunity in relation to a breach or event, fact, matter or circumstance, even if such liability could reasonably be considered to arise naturally from that breach or the event, fact, matter or circumstance or could reasonably be considered to have been in the contemplation of the parties at the time the parties entered into this Agreement as a probable result of that breach or the event, fact, matter or circumstance.

**Defect** means, in respect of any D1 Model EVC Station or Ancillary Equipment, any non-conformance of the relevant item with the specifications set out in Part A or B of Section 2 or Appendix 1 (as applicable), or any failure of the relevant item to function reliably and in the manner for which it was designed.

**Dispute** has the meaning given in clause 11(a).

**Electricity Reimbursement Amount** means, in respect of a Quarter, the total amount paid by PARTY B to its electricity provider for electricity used by the EVC Stations and Ancillary Equipment in that Quarter, as calculated in accordance with clause 7.1(b).

**Encumbrance** means a mortgage, charge, pledge, lien, hypothecation, title retention arrangement, other security interest (including as defined in the *Personal Property Securities Act 2009* (Cth)) or other third party interest.

**EV Charging Bays** means the parking spaces adjacent to each of the D1 Model EVC Stations, which are required to be reserved for use by electric vehicles pursuant to clause 8.5(d), as illustrated in Section 3.

**EVC Solution** means any electric vehicle charging solution, including any charging station, charging system or other facility designed to enable the charging of electric vehicles.

**Force Majeure Event** means a circumstance beyond the reasonable control of the parties (other than the payment of money) which results in a party being unable to observe or perform an obligation under this Agreement, including:

- (a) natural disasters, lightning strikes, earthquakes, floods, storms, explosions and fires;
- (b) epidemics and pandemics and any restrictions imposed by any Government Authority in connection therewith;
- (c) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
- (d) strikes, blockades and analogous industrial actions.

**Go-Live Date** means the first date on which each D1 Model EVC Station will become fully operational, as specified in the Completion Notice given by eLu to PARTY B pursuant to clause 4.1(d).

**Government Authority** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any law society or self-regulated body responsible for the regulation of any legal profession) in Australia (whether federal, state or local) or any other part of the world.

**Initial Term** has the meaning given in Item 6 of Section 1.

**Insolvency Event** means any of the following in relation to a person:

- (a) the person is (or states that the person is) unable to pay all of the person's debts as they fall due;
- (b) the person stops or suspends, or threatens to stop or suspend, the payment of all or a class of the person's debts;
- (c) the person is presumed, deemed, declared or taken to be insolvent or bankrupt;
- (d) a receiver, manager, trustee for creditors, liquidator, administrator or other similar controller, or insolvency or bankruptcy official is appointed in respect of the person or any of the person's property, assets or estate;
- (e) the person is subject to or party to any assignment, moratorium composition, or other arrangement (including a scheme of arrangement) with any of its creditors or is protected from creditors under any statute;

(f) an application or order is made, resolution passed, meeting convened, or any other action taken, in each case in connection with the person, which is preparatory to or could result in any of (a) to (e) above; and

(g) without limiting any of the above, the person is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand, is the subject of an event described in section 459C(2) or section 585 of the Corporations Act (or makes a statement from which it can be reasonably deduced the person is so subject), is wound up or dissolved or an application or order is made, or a resolution passed, for the winding up or dissolution of the person,

and includes something having a substantially similar effect to any of the above happening in connection with that person under the Laws of any jurisdiction.

**Installation** means the installation of the D1 Model EVC Stations and Ancillary Equipment at the Specified EVC Station Areas in accordance with the Installation Plan, including any structural, construction or specialised electrical works.

**Installation Plan** means the Installation Plan at Section 2 of this Agreement

**Installation Target Date** has the meaning given in Item 9 of Section 1.

**Intellectual Property** means all intellectual and industrial property rights, conferred by statute, at common law, in equity or otherwise, including copyright and neighbouring rights, all rights in relation to inventions, patents, patent applications, plant varieties, registered and unregistered trademarks, registered and unregistered designs, business and domain names, social media handles and content, know-how (being the body of knowledge, technical expertise, experience and skills, confidential processes and technical and confidential information acquired by a person in the design, development, manufacturing and marketing of a product or service), trade secrets and confidential information, and the goodwill and reputation associated with such.

**Jurisdiction** has the meaning given in Item 12 of Section 1.

**Law** means any applicable law, including any rule of common law, principle of equity, statute, regulation, proclamation, ordinance, by-law, rule, regulatory principle and requirement, mandatory code of conduct, mandatory standard, writ, order, injunction and judgement.

**Maximum Liability Amount** has the meaning given in Item 11 of Section 1.

**Loss** means any damage, loss, cost, charges or expense incurred by the party concerned.

**Notice** has the meaning given in clause 17.1.

**O&M Manual** refers to the operations and maintenance manual attached to Appendix 2 of this Agreement.

**Patrons** means patrons of the Business and other users of the Premises.

**Permitted Use** means:

- (e) the Installation, operation, testing and maintenance of the D1 Model EVC Stations and Ancillary Equipment; and
- (f) the supply to Patrons of electrical vehicle charging services and facilities through the operation of the D1 Model EVC Stations and any other services and facilities available from the software applications associated with the D1 Model EVC Stations.

**Personnel** means, in respect of a party, any of its officers, employees, consultants, suppliers, contractors, subcontractors and agents and any other persons authorised by it.

**Pre-Existing Materials** means any material, document, data, technology or Intellectual Property which is pre-existing or created independently of this Agreement which a party makes available for the performance of its obligations under this Agreement.

**Premises** has the meaning given in Item 4 of Section 1.

**Project Terms** means the terms and information set out in Sections 1 to 3 and Appendix 1 (inclusive) of this Agreement.

**Quarter** means each quarter or part of a quarter of a year ending on 31 March, 30 June, 30 September or 31 December, during the Term commencing on or after the Go-Live Date.

**Renewal Term** means the period specified in Item 7 of Section 1, commencing on the day immediately following the expiry of:

- (a) in respect of the first Renewal Term, the Initial Term; and
- (b) in respect of any other Renewal Term, the immediately preceding Renewal Term.

**Requisite Authorisations** means all Authorisations necessary to permit the Installation of the D1 Model EVC Stations at the Specified EVC Station Areas, including those Authorisations specified in Item 8 of Section 1.

**Revenue Split** has the meaning given in clause 7.1(e).

**Specified EVC Station Areas** means the locations on the Premises where the D1 Model EVC Stations are to be installed, as specified at Section 3.

**Term** means the Initial Term and, if clause 3.2 applies, each Renewal Term.

**Termination Provisions** means each of clauses 3.2(a), 4.1(e), 10.4 and 13.1, and **Termination Provision** means any of them.

## 1.1 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa and a gender includes other genders;
- (b) other grammatical forms of a defined word or expression have a corresponding meaning;
- (c) unless otherwise specified, a reference to a clause is to a clause of these Conditions, and a reference to any Schedule or Appendix is to a schedule or appendix to this Agreement and a reference to this Agreement includes any such Schedule and Appendix;
- (d) a reference to a document or agreement, includes the document or agreement as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to Sydney, Australia time;
- (g) a reference to a year (other than a financial year) or a month means a calendar year or calendar month respectively;
- (h) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (i) a reference to a person includes a natural person, partnership, firm, body corporate, trust, joint venture, association, governmental or local authority or agency or other entity;
- (j) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (k) any authorities, associations, bodies and entities whether statutory or otherwise will, in the event of such authority, association, body or entity ceasing to exist or being reconstituted, replaced or the powers or functions thereof being transferred to or taken over by any other authority, association, body or entity, be deemed to refer respectively to the authority, association, body or entity established, constituted or substituted in lieu thereof which exercises substantially the same powers or functions;

- (l) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; and
- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

## 1.2 Headings

Headings are for ease of reference only and do not affect interpretation.

## 1.3 Inconsistency

In the event of any conflict or inconsistency between these Conditions and the Project Terms, the Project Terms will take precedence.

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## 2. PREFERRED PROVIDER

### 2.1 Grant of rights

- (a) PARTY B grants to eLu the exclusive rights to Install, operate and maintain, electric vehicle charging stations on the Premises, for the benefit of patrons of the Business and other users of the Premises, on the terms and conditions of this Agreement.
- (b) PARTY B acknowledges and agrees that it is the intention of PARTY B to collaborate with eLu as its preferred provider of current and future generations of electric vehicle charging stations, on a long-term basis, and that eLu enters into this Agreement in reliance on such intent.
- (c) PARTY B further agrees that eLu may describe itself as PARTY B's preferred provider of electric vehicle charging stations, to actual and prospective commercial partners and customers of eLu, other third parties and the public generally, including in written and/or visual mediums of communication or advertising.

### 2.2 Non-exclusivity

Nothing in this Agreement is intended to prevent eLu from entering into agreements for the installation and operation of electric vehicle charging stations with any third parties.

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## 3. TERM

### 3.1 Initial Term

This Agreement will commence on the Commencement Date and will continue until the end of the Term, unless extended by agreement of the parties in writing or terminated earlier in accordance with the Termination Provisions.

### 3.2 Renewal after Initial Term

- (a) Without limiting the parties' rights under the Termination Provisions, this Agreement automatically renews, at the end of the Initial Term, for successive Renewal Terms, unless either party gives Notice of termination of this Agreement to the other party in writing, no more than 90 days and no less than 60 days prior to the commencement of the next Renewal Term.
- (b) Unless Notice of termination of this Agreement is given within the period specified in clause 3.2(a), this Agreement will remain on foot for the entirety of the next Renewal Term, unless terminated earlier in accordance with a Termination Provision.
- (c) Not less than 90 days prior to the end of the Initial Term and each Renewal Term, eLu will send an email Notice to PARTY B, specifying the last date by which PARTY B may terminate this Agreement pursuant to clause 3.2(a). For the avoidance of doubt, failure of eLu to give notice in accordance with this clause 3.2(c) will not affect the operation of the automatic renewal process contemplated in clauses 3.2(a) and 3.2(b).

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## 4. EVC SOLUTIONS

### 4.1 Current D1 Model EVC Stations

- (a) Subject to clause 4.1(b), eLu agrees to Install, operate and maintain the D1 Model EVC Stations on the Premises on the terms and conditions of this Agreement.
- (b) eLu's obligation to Install the D1 Model EVC Stations under this Agreement is subject to and conditional upon eLu having received, on or before the Installation Target Date, all Requisite Authorisations on terms and conditions satisfactory to eLu.
- (c) Subject to receipt of all Requisite Authorisations on terms and conditions satisfactory to it, eLu will undertake the Installation in each Specified EVC Station Area in accordance with the Installation Plan.
- (d) eLu will promptly notify PARTY B in writing when the Installation works at each Specified EVC Station Area have been completed and each D1 Model EVC Station is ready for use by Patrons (**Completion Notice**). The D1 Model EVC Stations will be fully operational on and from the date specified in the Completion Notice as the "Go-Live Date".
- (e) If, by the Installation Target Date, eLu has not received all Requisite Authorisations on terms and conditions satisfactory to it, either party



may, subject to complying with its obligations under clause 6, terminate this Agreement by Notice to the other party.

- (f) Nothing in this Agreement grants any legal or equitable interest in the D1 Model EVC Stations or the Ancillary Equipment to PARTY B. Notwithstanding anything else, eLu has and retains absolute legal and beneficial title to and ownership of the D1 Model EVC Stations and the Ancillary Equipment.

#### 4.2 Future EVC Solutions

- (a) eLu will keep PARTY B informed about future generations of EVC Solutions, as and when they become available to eLu for introduction to the Australian market.
- (b) eLu may, from time to time, make a proposal to PARTY B for the installation and operation of additional or replacement EVC Solutions on the Premises (**Upgrade Proposal**).
- (c) PARTY B grants eLu the first right to present any Upgrade Proposal to PARTY B and to negotiate with PARTY B the terms and conditions upon which such Upgrade Proposal will be implemented (**Upgrade Terms**).
- (d) PARTY B will, in good faith:
  - (i) consider any Upgrade Proposal made by eLu; and
  - (ii) negotiate the Upgrade Terms with eLu.
- (e) Without limiting clauses 4.2(c) and 4.2(d) or any other provision of this Agreement:
  - (i) if PARTY B wishes to install additional or replacement EVC Solutions on the Premises, PARTY B will first submit a request to eLu for an Upgrade Proposal and consider such Upgrade Proposal (if made by eLu, at its absolute discretion) before approaching any third party for an expression of interest, offer or proposal; and
  - (ii) if PARTY B receives any expression of interest, offer or proposal from a third party for the installation and operation of additional or replacement EVC Solutions on the Premises, PARTY B will give eLu the opportunity to submit an Upgrade Proposal (or revised Upgrade Proposal) to PARTY B to match or better that third party's pricing and/or terms (as applicable) for the same or similar EVC Solution (if eLu so chooses, in its absolute discretion).
- (f) If:
  - (i) eLu declines to submit an Upgrade Proposal to PARTY B pursuant to a request made by PARTY B under clause 4.2(e); or

- (ii) having received and considered an Upgrade Proposal (or revised Upgrade Proposal, if applicable) from, and negotiated the Upgrade Terms, with eLu in accordance with clauses 4.2(d) and 4.2(e)(ii), PARTY B is unable to reach agreement with eLu on the Upgrade Terms within 60 Business Days after receipt of the Upgrade Proposal or revised Upgrade Proposal (as applicable) (**Unaccepted Upgrade Proposal**),

PARTY B may thereupon approach and enter into an agreement for the installation and operation of EVC Solutions on the Premises with a third party [provided such agreement is not less favourable overall to PARTY B than the terms of this Agreement or the Unaccepted Upgrade Proposal].

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## 5. SPECIFIED EVC STATION AREAS

### 5.1 Licence to enter and use

- (a) Without limiting clause 2.1(a), PARTY B grants eLu an exclusive licence during the Term to enter upon the Premises and to use the Specified EVC Station Areas for the Permitted Use (**Licence**).
- (b) The Licence includes the right of eLu and any of its Personnel to enter upon the Premises from time to time throughout the Term with such vehicles, plant and equipment as necessary to undertake installation or maintenance or otherwise perform its obligations under this Agreement.
- (c) The rights granted to eLu under the Licence are contractual only and do not confer upon eLu any right to exclusive possession or occupancy of, or create any form of tenancy or other right, estate or interest (other than the right of a mere licensee) in or to, the Premises or any of the Specified EVC Station Areas.

### 5.2 Assistance

- (a) PARTY B will provide all assistance reasonably required by eLu to facilitate the efficient completion of the installation and the ongoing operation of the D1 Model EVC Stations, including:
  - (i) taking all steps necessary to comply with the terms and conditions of each Requisite Authorisation, and refraining from engaging in any conduct that may result in a breach of any such terms and conditions;
  - (ii) providing, and ensuring that appropriate Personnel of PARTY B is present at the Premises at all times during Business Hours and at reasonable times requested by eLu in advance outside of Business Hours to provide eLu and its Personnel with, as required:

(A) entry into the Premises;

if requested by and in consultation with eLu.

(B) access to the Specified EVC Station Areas and any other areas of the Premises reasonably required by eLu to perform its obligations under this Agreement; and

(C) access to the electrical networks on the Premises; and

(iii) ensuring that appropriate security measures and procedures are in place to enable the D1 Model EVC Stations to be safely and readily accessed and used by all Patrons and other parties.

(b) PARTY B agrees that it will not engage in conduct that may interfere with or prejudice the proper exercise by eLu of its rights under this Agreement or the proper performance by eLu of its obligations under this Agreement.

### 5.3 Right of entry

PARTY B and its Personnel may, at all reasonable times, access the Specified EVC Station Areas (or any part thereof) for the purpose of inspecting their state and condition to ensure compliance with any Law affecting the Premises, and may, after giving reasonable notice to eLu, carry out any other works that PARTY B considers necessary or desirable, including to the power, utility or other services provided to the Specified EVC Station Areas.

## 6. REQUISITE AUTHORISATIONS

(a) eLu will be responsible for applying for all Requisite Authorisations.

(b) eLu will promptly prepare and submit with the relevant Government Authority, an application for each Requisite Authorisation (each, an **Application**).

(c) PARTY B will provide all reasonable assistance to eLu in applying for the Requisite Authorisations, including:

(i) providing its consent to any Application as registered proprietor of the Premises;

(ii) granting access to eLu and any of its Personnel and contractors to the Premises, for the purpose of preparing any Application;

(iii) providing such information, documents and other materials in relation to PARTY B or the Premises as eLu or any Government Authority may require in support of or relation to any Application; and

(iv) communicating with Government Authorities in relation to any Application,

## 7. QUARTERLY PAYMENTS

### 7.1 Payments

(a) In consideration for the rights granted by PARTY B to eLu under and the performance by PARTY B of its obligations in accordance with this Agreement, eLu will pay to PARTY B:

(i) the Revenue Split; and

(ii) the Electricity Reimbursement Amount,

in respect of each Quarter, subject to and conditional upon the successful completion of Installation and the EVC Stations becoming fully operational in accordance with clause 4.1(d). Payment of the Electricity Reimbursement Amount will only be required if Item 13 of Section 1 has been selected as "YES".

(b) Subject to clause 7.1(a), in respect of each Quarter, the Electricity Reimbursement Amount will be calculated by multiplying the total electricity usage of each EVC Station (in kWh) during that Quarter, as measured in accordance with clause 7.1(d), by the applicable electricity charge rate charged to PARTY B by its electricity provider, as specified in the Electricity Billing Information provided by PARTY B for the relevant Quarter pursuant to clause 7.1(d).

(c) For the purposes of this Agreement, the electricity usage of each EVC Station as measured and recorded by the electricity meter installed by eLu at each Specified EVC Station Area for that purpose, will be conclusive evidence of that fact.

(d) PARTY B must promptly provide to eLu, in respect of each Quarter, such documentation as reasonably required by eLu to calculate the Electricity Reimbursement Amount for that Quarter in accordance with clause 7.1(b), including the applicable electricity charge rates charged to PARTY B by its electricity provider in respect of all time periods during the relevant Quarter (**Electricity Billing Information**).

(e) For each Quarter, revenue generated from the use of the D1 Model EVC Stations by Patrons will be allocated to the parties as specified in Item 14 of Schedule 1 (**Revenue Split**). eLu does not provide any guarantee about the amount of revenue that may be generated from use of the D1 Model EVC Stations by Patrons or the value of the Revenue Split during the Term.

(f) The Charging Fee for use of the EVC Stations is specified in Item 10 of Section 1. eLu reserves the right to vary this fee from time to time in response to changes in business or operating circumstances, including but not

limited to electricity costs, maintenance expenses, or regulatory requirements. Any changes to the charging fee will be communicated in writing to Party B at least 14 days prior to implementation.

## 7.2 Payment

eLu will pay to or as directed by PARTY B the Electricity Reimbursement Amount and the Revenue Split due for each Quarter, within 20 Business Days after the end of the relevant Quarter.

## 7.3 GST

Unless otherwise expressly stated in this Agreement, payments referred to in this Agreement are expressed on a GST-exclusive basis. If any taxable supply made by eLu under this Agreement is subject to GST, PARTY B may, in addition to the consideration for the supply, recover an additional amount from eLu on account of GST. The additional amount payable by eLu under this clause 7.3 is equal to the consideration payable to the supplier for the relevant supply multiplied by the prevailing GST rate and is, subject to PARTY B providing a tax invoice, payable at the same time and in the same manner as the consideration for the supply to which the additional amount relates. Except where the context suggests otherwise, terms used in this clause 7.3 have the meanings given under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any regulations made under that Act.

# 8. ONGOING OBLIGATIONS

## 8.1 Power capacity

PARTY B acknowledges and agrees that continual and unfettered access to electrical power is critical to the operation of the D1 Model EVC Stations, and that, to the extent it is within its power to do so, it will:

- (a) ensure that the D1 Model EVC Stations and the Specified EVC Station Areas have continued and unfettered access to and supply of electrical power at all times at the requisite capacity levels specified in Part C of Section 2 (**Requisite Power Supply**);
- (b) use its best endeavours to minimise any disruption to the Requisite Power Supply, including paying all electrical power bills as and when they fall due;
- (c) not, and will procure that its Personnel do not, do or omit to do anything that may result in any disruption to the Requisite Power Supply; and
- (d) promptly notify eLu of any scheduled electrical power outages that may affect the D1 Model EVC Stations and/or the Specified EVC Station Areas, as and when it is notified by its electricity provider.

## 8.2 Obligation to notify of risks

Each party will promptly notify the other party upon becoming aware of any:

- (a) Defect, damage or destruction in relation to:
  - (i) any D1 Model EVC Station, Ancillary Equipment or Specified EVC Station Area; or
  - (ii) any other part of the Premises, to the extent that any such Defect, damage or destruction may have consequential effects on any D1 Model EVC Station, Ancillary Equipment or Specified EVC Station Areas or the ability of either party to perform its obligations under this Agreement; or
- (b) circumstances likely to cause any risk to any D1 Model EVC Station, Ancillary Equipment or Specified EVC Station Area, the Premises or any person.

## 8.3 Further Installation

If eLu determines that further Ancillary Equipment is required to be installed in a Specified EVC Station Area to ensure the functional and efficient operation of the relevant D1 Model EVC Station (**Further Installation**), it will notify PARTY B of the proposed Further Installation and the parties agree to work together in good faith to arrange for the completion of the Further Installation within a reasonable time.

## 8.4 General obligations on eLu

During the Term, eLu agrees that it will:

- (a) only use the Specified EVC Station Areas for the Permitted Use;
- (b) Ensure the D1 Model EVC Stations and ancillary equipment are maintained and routinely inspected in accordance with the O&M Manual(s);
- (c) comply with PARTY B's reasonable directions in connection with access to and use of the Specified EVC Station Areas and other areas of the Premises;
- (d) make good any damage to any part of the Specified EVC Station Areas or the Premises caused by eLu or its Personnel;
- (e) if requested by PARTY B, remove any of its materials which are not wholly inside the Specified EVC Station Areas or are not permitted under clause 9;
- (f) not leave any rubbish or waste materials in or around the Specified EVC Station Areas; and
- (g) maintain appropriate insurance cover in respect of its business and insurable business assets.

## 8.5 General obligations on PARTY B

During the Term and without limiting its obligations under clause 5.2, PARTY B agrees that it will:

- (a) keep and maintain the Specified EVC Station Areas to at least the same standard as it customarily maintains the other parking areas in the Premises, namely:
  - (i) in good repair and condition except for fair wear and tear;
  - (ii) clean, tidy and free of vermin and pests; and
  - (iii) appropriately secure and safe from unauthorised interference from third parties (including reasonable precautions to protect the Specified EVC Station Areas from graffiti and vandalism);
- (b) take all reasonable measures to protect D1 Model EVC Stations and Ancillary Equipment from damage or destruction, including repairing any damage caused by PARTY B or its Personnel;
- (c) ensure that the Specified EVC Station Areas and D1 Model EVC Stations are safely and readily accessible to all Patrons, eLu and eLu's Personnel, subject to the terms of this Agreement;
- (d) ensure that the EV Charging Bays for each Specified EVC Station Areas (as illustrated in Section 3) are always reserved and made available for use by Patrons as parking spaces for electric vehicles; and
- (e) not place permanent fixtures or other obstructions in the Specified EVC Station Areas or EV Charging Bays without the prior written consent of eLu;
- (f) if any property or equipment of a non-permanent nature is installed by PARTY B in or around the Specified EVC Station Areas or EV Charging Bays, and eLu:
  - (i) reasonably believes that such property or equipment is affecting or has the potential to affect the operation or maintenance of any D1 Model EVC Station or Ancillary Equipment; and
  - (ii) requests that such property or equipment be removed,

PARTY B shall promptly remove such property or equipment; and
- (g) comply with all applicable Laws affecting or relating to the use of the Specified EVC Station Areas and with all applicable rules and requirements imposed by any Government Authority having jurisdiction or authority over or in respect of the Specified EVC Station Areas.

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## 9. SIGNAGE

### 9.1 Signage at Specified EVC Station Areas

eLu may display and affix any signs in or around the Specified EVC Station Areas (but in any case, within the Premises) as specified in Section 3 or as otherwise reasonably necessary to direct Patrons to the Specified EVC Station Areas to use the D1 Model EVC Stations or to comply with the terms and conditions of any Requisite Authorisation or applicable Law in respect of EVC Solutions.

### 9.2 Responsibility for signage

- (a) eLu will be solely responsible for all costs and expenses incurred in the creation and display of any signage in the Specified EVC Station Areas or otherwise on the Premises.
- (b) eLu will, at its own cost, obtain any Authorisations required to erect or display signage in the Specified EVC Station Areas or otherwise on the Premises.

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## 10. FORCE MAJEURE

### 10.1 Notice

If either party is prevented from or impeded in performing any of its obligations under this Agreement due to a Force Majeure Event (**Affected Party**), it will promptly give Notice to the other party stating the circumstances constituting the Force Majeure Event and the extent and likely duration of those circumstances.

### 10.2 Suspension

If an Affected Party gives a Notice under clause 10.1, the relevant obligations of the Affected Party under this Agreement will be suspended for as long as the Force Majeure Event continues.

### 10.3 Obligations

If a Force Majeure Event occurs, the Affected Party will:

- (a) make every reasonable effort to minimise the effects of the Force Majeure Event; and
- (b) promptly resume performance of its obligations under this Agreement as soon as reasonably possible after removal of the Force Majeure Event.

### 10.4 Termination

If a Force Majeure Event occurs and continues for a period of [6] months, or if there is no reasonable possibility that such event will be cured within a [6] month period, then either party will be entitled to terminate this Agreement immediately by Notice to the other party.

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## 11. DISPUTE RESOLUTION

- (a) If a dispute arises out of or in relation to this Agreement (**Dispute**), the parties must not commence legal proceedings in relation to the Dispute unless and until they have complied with this clause 11.
- (b) If any Dispute arises, the party claiming that a Dispute has arisen will provide Notice to the other party, giving details of the Dispute (**Dispute Notice**).
- (c) During the 10 Business Day period immediately after a Dispute Notice is given (or such longer period agreed to in writing by the parties) (**Initial Resolution Period**), each party agrees that it will use its best efforts to attempt to resolve the Dispute.
- (d) If the parties are unable to resolve the Dispute by mutual negotiation during the Initial Resolution Period, the parties will refer the Dispute for mediation administered by the Australian Disputes Centre (**ADC**) before having recourse to arbitration or litigation. The mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC (**Guidelines**). The terms of the Guidelines are hereby deemed incorporated into this Agreement.
- (e) Nothing contained in this clause 11 will:
  - (i) deny any party the right to seek injunctive or urgent relief from an appropriate court where failure to obtain such relief would cause irreparable damage to the party concerned; or
  - (ii) apply where a party is entitled under this Agreement to immediately terminate this Agreement.

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## 12. CONFIDENTIALITY

### 12.1 Use and disclosure of Confidential Information

A party (in this clause 12, the **receiving party**) which receives Confidential Information of another party (in this clause 12, the **disclosing party**) agrees that it will not:

- (a) use any of the disclosing party's Confidential Information except to the extent necessary for the receiving party to exercise its rights and perform its obligations under or in connection with this Agreement; or
- (b) disclose any of the disclosing party's Confidential Information except in accordance with clauses 12.2 or 12.3.

### 12.2 Disclosures to Personnel

The receiving party may disclose Confidential Information to its Personnel and suppliers (including third party service providers) if:

- (a) the disclosure is necessary to enable the receiving party to perform its obligations or to exercise its rights under this Agreement;
- (b) before the disclosure, the receiving party informs the relevant Personnel or supplier of the receiving party's obligations in relation to the disclosing party's Confidential Information under this Agreement; and
- (c) the receiving party ensures that any person to whom Confidential Information is disclosed under this clause 12.2 keeps the Confidential Information confidential and does not use it other than as expressly permitted under clause 12.2(a).

### 12.3 Disclosures required by Law

- (a) Subject to clause 12.3(b), the receiving party may disclose Confidential Information that the receiving party is required to disclose:
  - (i) by Law or by order of any court or tribunal of competent jurisdiction; or
  - (ii) by any Government Authority.
- (b) If the receiving party is required to make a disclosure under clause 12.3(a), the receiving party will:
  - (i) to the maximum extent possible, notify the disclosing party immediately that the receiving party anticipates that it may be required to disclose any of the disclosing party's Confidential Information;
  - (ii) consult with and follow any reasonable directions from the disclosing party to minimise disclosure; and
  - (iii) if disclosure cannot be avoided, only disclose Confidential Information to the extent necessary to comply with the relevant requirement.

### 12.4 Receiving party's return or destruction of documents

On termination of this Agreement, the receiving party will immediately:

- (a) deliver to the disclosing party all documents and other materials containing, recording or referring to Confidential Information of the disclosing party; and
- (b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information of the disclosing party,

which are in the possession, power or control of the receiving party, except to the extent any Confidential Information must be retained for the purpose of compliance with applicable Law, in which case the receiving party must only retain one copy of such Confidential Information and continue to treat such information as Confidential Information and to protect such information in accordance with this Agreement.

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## 13. TERMINATION

### 13.1 Termination for cause

Either party (**non-defaulting party**) may immediately terminate this Agreement by Notice to the other party (**defaulting party**) if:

- (a) the defaulting party breaches any material provision of this Agreement and does not rectify that breach within 30 days after receiving Notice from the non-defaulting party to do so, or if the breach is incapable of remedy; or
- (b) an Insolvency Event occurs in relation to the defaulting party.

### 13.2 No other rights of termination

Each party acknowledges and agrees that they shall have no right to terminate this Agreement other than as expressly contemplated by and in accordance with a Termination Provision.

### 13.3 Consequences of termination or expiry

Upon termination of this Agreement for any reason or the expiry of the Term:

- (a) PARTY B is entitled to payment of all accrued but outstanding Revenue Split and Electricity Reimbursement Amount payments in respect of any Quarter up to and including the date of termination or expiry;
- (b) eLu will promptly remove the D1 Model EVC Stations and all Ancillary Equipment that is not affixed to the Specified EVC Station Areas and, at the election of PARTY B, either:
  - (i) make good the Specified EVC Station Areas by removing all infrastructure that was constructed or installed as part of the EVC Station installation and reinstating the Specified EVC Station Areas to a reasonable condition;
  - (ii) pay to PARTY B an amount equal to the reasonable cost of removal and reinstatement of the Specified EVC Station Area in accordance with clause 13.3(b)(i) above; or
  - (iii) leave in place any fixtures (other than the D1 Model EVC Stations) and infrastructure that was constructed or installed as part of the Installation;

- (c) PARTY B agrees to provide all reasonable assistance to eLu in discharging its obligations under clause 13.3(b), but for the avoidance of doubt, ownership of the D1 Model EVC Stations and all Ancillary Equipment (except any Ancillary Equipment affixed to the ground that PARTY B has elected for eLu to leave in place under clause 13.3(b)(iii)) remains with eLu at all times and PARTY B must not, and must not allow any other person to, deal with this property;

- (d) each party will immediately cease using the other party's Confidential Information and return or destroy all Confidential Information of the other party in accordance with clause 12.4;

- (e) each party will be released from its further obligations under this Agreement, except for those obligations which are expressed to survive or by their nature are intended to survive termination or expiry of this Agreement; and

- (f) each party retains the rights or remedies it has against the other party in respect of any breach of this Agreement occurring before termination or expiry.

### 13.4 Survival

The provisions of clauses 7 (Quarterly Payments), 10 (Force Majeure), 11 (Dispute Resolution), 12 (Confidentiality), 14 (Intellectual Property), 15 (Limitation of Liability), 16 (Warranties), 17 (Notices) and 18 (General) and any other clause which by its nature is intended to survive termination or expiry of this Agreement, will survive termination or expiry of this Agreement.

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## 14. INTELLECTUAL PROPERTY

- (a) Unless expressly stated to the contrary, nothing in this Agreement constitutes a transfer or assignment of any Intellectual Property.
- (b) All Intellectual Property in any Pre-Existing Materials remain vested in the person that owns the Intellectual Property at the Commencement Date.
- (c) All Intellectual Property created, developed, conceived or otherwise brought into existence by eLu in the course of performing or arising out of the performance of its obligations under this Agreement (**Developed IP**) are owned by and vest in eLu immediately upon their creation.
- (d) To the extent PARTY B has any right, title or interest in any jurisdiction, or any right to be assigned any right, title or interest in any jurisdiction, in any Developed IP, PARTY B hereby unconditionally and irrevocably transfers and assigns to eLu absolutely and beneficially the whole of PARTY B's right, title and interest to eLu.

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## 15. LIMITATION OF LIABILITY

### 15.1 General

In the event that a Claim is brought by a party, to the maximum extent permitted by Law:

- (a) neither party will be liable to the other party for Loss to the extent that such Loss was caused or contributed to by any act or omission of the other party or its Personnel;
- (b) neither party will be liable to the other party for Consequential Loss; and
- (c) the Liability of eLu in respect of a Claim brought by PARTY B with respect to a Defect arising in the D1 Model EVC Stations or Ancillary Equipment is limited to, at eLu's option, the repair or replacement of the Defective unit.

### 15.2 Maximum liability

- (a) Without limiting clause 15.1 and to the extent permitted by Law, the maximum aggregate Liability of each party under any Claims, whether in contract, equity or tort (including negligence or breach of statutory duty), by statute or otherwise, is limited to the Maximum Liability Amount.
- (b) The limitation in clause 15.2(a) does not apply to the extent that the Liability of a party arises from:
  - (i) fraud, wilful misconduct or gross negligence;
  - (ii) breach of any obligations under any Law;
  - (iii) loss of, damage to or destruction of tangible property; or
  - (iv) personal injury or death.

### 15.3 Mitigation

- (a) Each party agrees that it will do all things and take all actions which are reasonably necessary to mitigate any Loss which arises under this Agreement.
- (b) No party is liable to the other party to the extent that any Loss suffered by the other party is caused or contributed to by a breach of the obligation in clause 15.3(a) immediately above.

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## 16. WARRANTIES

### 16.1 No exclusion of statutory warranties

Without excluding, restricting or modifying any Liability or warranties that cannot be (or to the extent that they cannot be) excluded, restricted or modified by applicable Law (including, if applicable, any statutory warranties under the Australian Consumer

Law), the parties agree that no other warranties shall be given other than those expressly set out in this clause 16.

### 16.2 Mutual warranties

Each party represents and warrants in favour of the other party that:

- (a) it is a duly incorporated and validly exists under the Laws of the place of its incorporation;
- (b) it has full power and capacity to enter into and perform its obligations under this Agreement in accordance with its terms;
- (c) this Agreement constitutes a valid and legally binding obligation on it and is enforceable against it in accordance with its terms;
- (d) it has taken all corporate and other action required and obtained or been granted all consents, approvals, permissions and authorisations, whether internal or external, necessary for the execution, delivery and performance by it of this Agreement in accordance with its terms;
- (e) the entry into and performance of this Agreement does not cause or result in default under any agreement, undertaking or Encumbrance by which it is bound or which would prevent it from entering into and performing its obligations under and in accordance with the terms and conditions of this Agreement;
- (f) it enters into, delivers and performs this Agreement on its own account and not as trustee for or nominee of any other person; and
- (g) no Insolvency Event has occurred or subsists in respect of it, and no fact, matter, event or circumstance has occurred which is likely to give rise to any such Insolvency Event.

### 16.3 Specific warranties

PARTY B represents and warrants in favour of eLu that PARTY B is the registered proprietor of the Premises and has the unfettered right and entitlement to enter into this Agreement and grant the rights purported to be granted by it to eLu under this Agreement.

### 16.4 Reliance

Each party acknowledges that the other party enters into and performs its obligations under this Agreement in reliance on the truth and accuracy of the representations and warranties given by the first-mentioned party and on such representations and warranties not being misleading or deceptive (including by omission).

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## 17. NOTICES

### 17.1 Service of notices

A notice, demand, consent, approval or communication under this Agreement (**Notice**):

- (a) must be in writing and in English directed to the recipient's address for notices specified in Item 1 or 2 of Section 1 (as applicable), as varied by any Notice;
- (b) must be hand delivered, left at or sent by prepaid post or facsimile to the recipient's address for notices specified in Item 1 or 2 of Section 1 (as applicable), as varied by any Notice; and
- (c) may be given by an agent of the sender.

### 17.2 Effective on receipt

A Notice given in accordance with clause 17.1 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered or left at the recipient's address, on delivery;
- (b) if sent by prepaid post, the third Business Day after the date of posting, or the fifth Business Day after the date of posting if posted to or from outside Australia); and
- (c) if sent by email, when received by the recipient's email server (whether or not classified as spam) unless the sender receives an automated message that delivery of the email has failed,

but if the delivery or transmission under clause 17.2(a) or (c) is outside Business Hours, the Notice is taken to be received at the commencement of Business Hours after that delivery, receipt or transmission.

### 17.3 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings in relation to this Agreement may be served by any method contemplated by this clause 17 in addition to any means authorised by Law.

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## 18. GENERAL

### 18.1 Alterations

Except where this Agreement expressly permits or states otherwise, this Agreement may be altered only in writing signed by each party.

### 18.2 Approvals and consents

Except where this Agreement expressly permits or states otherwise, a party may, in its discretion, give

conditionally or unconditionally or withhold any approval or consent under this Agreement.

### 18.3 Assignment

A party may only assign this Agreement or a right under this Agreement with the prior written consent of the other party.

### 18.4 Electronic signing and counterparts

- (a) To the extent permitted by Law, this Agreement may be electronically signed.
- (b) Each party consents to this Agreement being electronically signed by or on behalf of a party.
- (c) Where this Agreement is electronically signed by or on behalf of a party, the party warrants and agrees that:
  - (i) the electronic signed has been used to identify the person signing and to indicate that the party intends to be bound by electronic signature; and
  - (ii) they or anyone signing on their behalf has affixed their own electronic signature.
- (d) This Agreement may be signed, including electronically signed, in a number of counterparts which together will constitute one document.
- (e) Each party consents to the exchange of counterparts of this Agreement by delivery by email or such other electronic means as may be agreed by the parties. The parties agree that an electronic or scanned copy of a counterpart that is delivered by email or such other agreed electronic means:
  - (i) is deemed an original counterpart;
  - (ii) is sufficient evidence of the execution of the original; and
  - (iii) may be produced in evidence for all purposes in place of the original.

### 18.5 Costs

Each party will bear its own costs in relation to, and associated with, this Agreement and giving effect to this Agreement.

### 18.6 No merger

Except where this Agreement expressly states otherwise, the rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

### 18.7 Entire agreement



This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

#### **18.8 Further action**

Each party agrees that it will do, at its own expense, everything reasonably necessary to give full effect to this Agreement and the transactions contemplated by it (including executing documents) and to use all reasonable endeavours to cause relevant third parties to do likewise.

#### **18.9 Severability**

If the whole or any part of a provision of this Agreement is invalid or unenforceable in a jurisdiction it must, if possible, be read down for the purposes of that jurisdiction so as to be valid and enforceable. If however, the whole or any part of a provision of this Agreement is not capable of being read down, it is severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

#### **18.10 Enforcement of indemnities**

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

#### **18.11 Survival**

Any indemnity or obligation of confidentiality in this Agreement is independent and survives termination of this Agreement. Any other term which by its nature is intended to survive termination of this Agreement survives termination of this Agreement.

#### **18.12 Attorneys**

Each person who executed this Agreement on behalf of a party declares that he or she has no notice of the revocation or suspension by the grantor or in any other manner of the power of attorney under the authority of which he or she executes this Agreement.

#### **18.13 Waiver**

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise by a party of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

#### **18.14 Relationship**

Except where this Agreement expressly states otherwise, this Agreement does not create a relationship of employment, trust, agency or partnership between the parties.

#### **18.15 Remedies cumulative**

The rights provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this Agreement.

#### **18.16 Governing law**

This Agreement will be governed by and construed in accordance with the Laws for the time being in force in the jurisdiction specified in Item 12 of Section 1 and the parties, by entering into this Agreement, are deemed to have submitted to the non-exclusive jurisdiction of the courts of that State.

#### **18.17 Exercise of rights**

A party may exercise a right, at its discretion and separately or concurrently with another right.

**Executed as an agreement**

**Executed by eLu Pty Ltd ACN 667 494 171** in )  
accordance with section 127 of the )  
*Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary\*

Delete whichever does not apply

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director/company secretary\*

Delete whichever does not apply

**Executed** by Party B in accordance with )  
section 127 of the *Corporations Act 2001* (Cth) )  
by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary\*

Delete whichever does not apply

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director/company secretary\*

Delete whichever does not apply



## Appendix 1

## Appendix 2

# EV Charger Usage and Revenue Analysis – Base-and-Explore Tourists

## Summary

This brief report estimates annual usage and potential revenue for an electric vehicle (EV) fast charger based on base-and-explore tourist behaviour in a regional destination.

Three EV adoption scenarios (1%, 3%, and 5%) are analysed using conservative assumptions.

The EV adoption scenarios of 1%, 3%, and 5% represent the estimated percentage of electric vehicles (EVs) currently on the road in Western Australia (WA). This percentage is used as a baseline for projecting the number of tourist EVs likely to visit the region.

As there are very few charging options available in town—primarily due to the lack of fast chargers and only a limited number of destination slow chargers – the current number of EV tourists is assumed to be negligible, and this is supported by current data on the use of the Shires Slow Chargers that have only delivered around 4,000kWh of power over the last 12 months.

## Assumptions and Methodology

- Total overnight stays: 750,000 per year
- Average party size: 2.5 people
- Each party charges once per day
- Daily driving distance: 70 km (base-and-explore pattern)
- EV energy consumption: 18 kWh per 100 km
- Electricity price: \$0.08 per kWh (approximate profit share for the Shire)
- EV adoption scenarios: 1%, 3%, and 5% of tourist parties
- Energy per stay:  $(70 \text{ km} \div 100) \times 18 \text{ kWh} = 12.6 \text{ kWh}$

## Results

The table below summarises estimated annual EV charger usage and revenue for each scenario:

EV Adoption Rate - As a percentage of all vehicles	EV Tourist Parties (annual)	Total kWh (annual)	Revenue (\$, annual)
1%	3,000	37,800	\$3,024
3%	9,000	113,400	\$9,072
5%	15,000	189,000	\$15,120

## Interpretation

Even at a modest 1% EV adoption rate, the charger could see approximately 3,000 sessions per year, consuming 37,800 kWh and generating \$3,024 in revenue. At 5%, this rises to 15,000 sessions, 189,000 kWh, and \$15,120 in revenue.

## Exclusions

The following scenarios do not account for additional revenue from:

- Local Use
- Day trippers
- Through travellers -
- Electricity that the Shire can supply through Solar generation – noting that the agreement is based on the synergy rate we are charged for power, if we provide the power from solar, the Shire gains 38c/kWh.

It should be noted that, while these exclusions have been made due to the difficulty in predicting their impact, usage by through travellers is likely a significant target market for fast chargers—many may stop briefly to charge, grab a coffee, and continue on their journey. Additionally, solar generation by the Shire during weekends and holidays, when charger usage is probably at its peak, could have a substantial effect on overall revenue. Therefore, the current estimations should be considered conservative, as they may understate the potential benefits from these important factors.

# Potential Revenue from the Shires Fast Charger at the CRC

## Summary

In addition to the assessment of profit share income, there remains the question of impacts on the Shire's own fast charger, which is due to be installed in early 2026.

While the Shire's commitment to installing its own EV charger is a significant step toward supporting sustainable transport and attracting EV travelers, relying on a single charging point may not be sufficient to instill full confidence in EV owners planning journeys to the region. Many EV drivers consider reliability and redundancy crucial when travelling, as a single charger poses risks of downtime or waiting times, which can deter potential visitors.

Expanding the number of chargers available within the Shire, especially by introducing a fast-charge option or additional charging stations in town, would likely enhance the region's appeal to EV tourists. With multiple charging points, the Shire can offer greater assurance of access and convenience, encouraging a higher percentage of EV travelers to stop, stay, and spend locally.

## Assumptions and Methodology

- Total overnight stays: 750,000 per year
- Average party size: 2.5 people
- Each party charges once per day
- Daily driving distance: 70 km (base-and-explore pattern)
- EV energy consumption: 18 kWh per 100 km
- Electricity price: \$0.35 per kWh (approximate profit for the Shire)
- EV adoption scenarios: 1%, 3%, and 5% of tourist parties
- Energy per stay:  $(70 \text{ km} \div 100) \times 18 \text{ kWh} = 12.6 \text{ kWh}$
- Additional EV charging is evenly distributed between the CRC charger and the eLumina Charger

EV Adoption Rate – As a percentage of all vehicles	EV Tourist Parties (annual)	Total kWh (annual)	Additional Revenue (\$, annual) at the CRC Charger
1%	3,000	37,800	\$6,615

## Interpretation

This means that for every 1% increase in the proportion of all travelers who arrive in town using an EV, approximately \$6,000 in additional annual profit could be generated by the CRC charger. Since higher EV adoption is likely tied to increased confidence in the availability and reliability of charging infrastructure, this further emphasises the importance of installing more rapid chargers beyond just the CRC charger to support and encourage greater EV use.

## Exclusions

The following scenarios do not account for additional revenue from:

- Local Use
- Day trippers
- Through travelers

It should be noted that, while these exclusions have been made due to the difficulty in predicting their impact, usage by through travellers is likely a significant target market for fast chargers—many may stop briefly to charge, grab a coffee, and continue on their journey. Therefore, the current estimations should be considered conservative, as they may understate the potential benefits from these important factors.