

## DESTINATION PARTNER TERMS AND CONDITIONS

### APPLICABILITY:

- a. These Destination Partner Terms & Conditions (“**Destination Partner Terms**”) constitute a binding legal agreement between Livingston Energy Group, LLC and all associated entities, representatives, partners, or other third parties providing products or services in conjunction with Livingston (hereinafter referred to as “**Operator**”), and the person, company, partnership, or other legal entity (hereinafter referred to as the “**Destination Partner**”) wishing to install one or more electric vehicle charging stations (“EVCS”) on the property they own or manage. Livingston and Destination Partner can be referred to herein individually as “Party” or together as “Parties.” Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Software Terms.
- b. The accompanying quotation/confirmation of sale/invoice (the “**Proposal**”), the Exhibits (defined below), these Destination Partner Terms, the Software Terms, and the Standard Terms (these being available on our website at [www.solution.energy/terms](http://www.solution.energy/terms)) (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.
- c. These Destination Partner Terms shall be considered binding for the parties upon Customer’s acceptance of the Proposal.

### BUSINESS RELATIONSHIP:

- a. The attached map, drawing, and/or diagram(s) (“**Exhibits**”) define the properties (“**Property/Properties**”) mutually agreed upon by both Parties where the EVCS will be installed and to which this Agreement will apply.
- b. By signing the Proposal, Destination Partner also represents that they are the owner or manager of certain property and that this Agreement does not violate any other agreement or commitment that they are subject to.
- c. The term of this Agreement will begin on the date the first Proposal is signed by both Parties (“**Effective Date**”) and will continue for each Property mutually agreed upon in writing by both Parties, for ten (10) years from each respective Effective Date (the “**Term**”).
- d. Upon mutual written agreement, the Parties may renew this Agreement for additional consecutive renewal terms of five (5) years. Either Party may elect not to renew this Agreement, by providing written notice to the other Party not less than sixty (60) days prior to the expiration of the then expiring term.

- e. Destination Partner grants Operator a right-of-entry to the Properties for the construction and installation of one or more EVCS therein and, further, grants Operator an exclusive license with respect to the construction, installation, operation, and maintenance of the EVCS at such Properties. The above-mentioned rights consist of (a) a right of ingress and egress over the Properties for the purposes of exercising the rights herein granted; (b) the sole and exclusive right and privilege to construct, install, own, operate, maintain, repair, disconnect, replace, upgrade and remove the EVCS at the Property; and (c) the right, on an exclusive basis, to market and to solicit the sale and provision of electric car charging sessions (“**Charging Sessions**”) and related services to persons at the Properties. Destination Partner covenants, acknowledges, and agrees that all sale or provision of Charging Sessions at the Properties shall be by means of the EVCS installed and operated by Operator only. Destination Partner shall not cause or permit the sale of electric fuel, battery power or any other product or service similar to Charging Sessions or the operation of EVCS or similar machines or apparatus by any person, firm, or corporation (including Destination Partner) at the Properties other than Operator.
- f. Subject to additional Proposals and Exhibits, Operator may install and operate EVCS at additional Properties (each, an “**Additional Property**”) owned or managed by Destination Partner, and, upon such mutual written agreement, such Additional Properties will be added to the Exhibits attached hereto and be deemed Properties hereunder.
- g. In the event of sale or transfer of one or more Properties by Destination Partner during the Term of this Agreement, Operator’s rights shall be conveyed with the Property/Properties. Operator may assign this Agreement to a successor to Operator by merger, consolidation or the purchase of substantially all of Operator’s assets, without the consent of Destination Partner, provided that the following conditions are satisfied (a “**Permitted Transfer**”): (i) Operator is not then in Default hereunder; and (ii) Operator gives Destination Partner written notice prior to such Permitted Transfer.
- h. Operator shall, at its sole expense, construct improvements, as described in the Exhibits, to be used solely by Operator for operation of EVCS and may include future-proofing, supporting equipment such as security cameras, energy storage, and photovoltaic generation systems. Both Parties agree to coordinate maintenance and construction activities to minimize disruption to the Properties and ensure EVCS are always accessible. Destination Partner agrees to notify Operator within a reasonable time if (a) it has knowledge of third parties impairing or misusing the EVCS, or (b) it obtains knowledge of a needed repair to the EVCS. If drivers who do not utilize the EVCS repeatedly park in the parking spaces designated for the EVCS, thereby impairing use of the EVCS, then the parties shall together determine and implement an appropriate and effective strategy for preventing such impairment, including, but not limited to, alternative signage and painted asphalt. Destination Partner shall use

- reasonable efforts to actively monitor the Properties to ensure that use of the EVCS is not impaired.
- i. Destination Partner shall have the right to require that Operator relocate the EVCS to alternate locations at the Property or to alternate Properties owned or managed by Destination Partner, provided that the cost of relocation shall be borne solely by Destination Partner, and that the services of Operator as described herein are not interrupted, nor diminished in quality or capacity to any material extent. Operator shall commence performance of such relocation within a reasonable period of time subsequent to a mutual written agreement of the Parties regarding the relocation. Such “reasonable period” shall take into account factors including, but not limited to, weather conditions, manpower and emergency situations.
  - j. As it pertains to the improvements and use described in this Agreement, Operator shall be responsible for obtaining all necessary consents, permits, program approvals, or utility agreements for performance of the services as described herein, and complying with applicable codes, laws, and ordinances. In the event Operator does not have authorization to obtain such described approvals from an entity or jurisdiction, Destination Partner shall provide written consent, not unreasonably withheld, conditioned, or delayed, and at no additional cost to Operator, to enable Operator to use and access the Properties as agreed upon herein. Copies of all approved work permits and site plans shall be provided to Destination Partner.
  - k. Destination Partner shall establish a separate meter for services and will pay the related costs directly to the utility. Utility costs for the separate meter resulting from Operator-related activity at the Properties during the Term are the sole responsibility of Destination Partner. Operator shall have no responsibility for installation, maintenance, or removal of either that separate meter or any utility-owned infrastructure at the Properties. Operator shall provide Destination Partner with the utility plan for approval prior to submitting to the electric company or municipality.
  - l. Operator shall be responsible for maintaining the EVCS for the Term, with Destination Partner incurring no liability pertaining to the maintenance of the EVCS. Destination Partner shall be responsible for ordinary maintenance, including, but not limited to, landscaping, debris/garbage removal, sweeping, or snow removal of the common property such as curbs, sidewalks, crosswalks, or parking spaces which are at the Properties.
  - m. Neither Party shall be liable to the other for any lost profits, special, incidental, punitive, exemplary or consequential damages, including, but not limited to, frustration of economic or business expectations, loss of profits, loss of capital, cost of substitute product(s), facilities or services, or down time cost, even if advised of the possibility of such damages.
  - n. Operator shall carry commercial general liability insurance in a minimum amount of \$1,000,000 and shall include Destination Partner as additional insured for the Term.

- o. Operator may advertise the EVCS and related services at the Premises as it relates to allowed uses within this Agreement. Destination Partner shall grant Operator and any third parties providing funding for the EVCS permission to take, use and publish photographs of the EVCS, as well as Destination Partner's name and logo, and any information related to the project, which may be included on printed or electronic materials or posted on websites. Operator may, without the prior approval of Destination Partner, disclose that Operator's services are available at the Properties, as well as other information regarding the hours and accessibility of the Properties. Operator may make general press releases and statements, hold press conferences, both through traditional and electronic media, including websites created by Operator or other third parties, regarding the execution of this Agreement and the status of the activities contemplated herein. Outreach events, trainings, and advertising and marketing events occurring on site are authorized but must be coordinated with and approved by the Destination Partner.

MISCELLANEOUS:

- a. Except for the gross negligence, willful misconduct, or bad faith of Destination Partner, Operator shall indemnify and hold Destination Partner and its shareholders, directors, officers, partners, employees, and agents ("**Destination Partner Indemnified Parties**") harmless from and against:
  - i. all losses, liabilities, damages, judgments, claims, or causes of action ("**Claims**") against Destination Partner and Destination Partner Indemnified Parties directly arising from any act, omission (where Operator has a legal duty to act), or negligence of Operator or its contractors, licensees, agents, servants, or employees ("**Operator Parties**");
  - ii. all Claims against Destination Partner and Destination Partner Indemnified Parties arising from any accident, injury, or damage whatsoever directly caused by any act, omission (where Operator has a legal duty to act), or negligence of Operator or Operator Parties to any person or to the property of any person and occurring at the Properties during the Term.
  - iii. any breach, violation, or non-performance of any terms in this Agreement set forth and contained on the part of Operator to be fulfilled, kept, observed, and performed.
- b. Except for gross negligence, willful misconduct, or bad faith of Operator, Destination Partner shall indemnify and hold Operator and its shareholders, directors, officers, partners, employees, invitees, and agents (the "**Operator Indemnified Parties**") harmless from and against all claims against Operator Indemnified Parties arising from:
  - i. all Claims against Operator or Operator Indemnified Parties arising from any accident, injury, or damage taking place during the construction of

- Operator improvements that is claimed to have resulted from an act, omission, or negligence of Destination Partner or Destination Partner Parties;
- ii. any damage to the EVCS arising from any act, omission, or negligence of Destination or its contractors, licensees, agents, servants, employees, invitees, or visitors ("**Destination Partner Parties**");
  - iii. a default by Destination Partner under this Agreement.
- c. Indemnity under this clause shall include indemnity from and against any and all liability, fines, suits, demands, costs, and expenses of any kind or nature (including, without limitation, reasonable attorneys' fees and disbursements) incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof. If any indemnified party is taxable upon the receipt of any payments received regarding any of the indemnities under this agreement, the sum due in respect of such payment shall be increased to the extent necessary to ensure that after being taxed the indemnified party receives and retains a net sum equal to the sum it would have received and retained had the payment not been taxable to that indemnified party.
  - d. Additionally, both Parties hereby agree to indemnify and hold the other harmless from any claims of commissions or fees relating to the execution of this Agreement.
  - e. The indemnified shall provide prompt notice to the indemnifying party of any potential Claims required to be indemnified under this Agreement. The indemnified party shall not take any action that may prejudice the indemnifying party's defense of any Claims.
  - f. Both Parties will keep this Agreement, previous versions of Exhibits, and related documentation and communication strictly confidential, except to Parties' lenders, accountants, counsel, and potential purchasers. Notwithstanding the foregoing, Parties may provide copies of this Agreement or portions hereof to utility providers or governmental authorities, as reasonably necessary or desirable to facilitate or effectuate the intents and purposes of this Agreement. If a Party desires to disclose any portion of this Agreement to a third party not previously mentioned in this section, they shall be required to obtain written permission from the other Party.
  - g. All official communications shall be in writing and deemed given if delivered by prepaid (i) U.S. Mail, certified, registered, return receipt requested, or (ii) overnight courier service to the address the other party as specified herein. Both Parties may change their respective addresses for notices by giving notice of such new address in accordance with this provision.
  - h. In the event a dispute, controversy, or claim arises out of or in relation to this Agreement, the Parties agree to submit the matter for resolution to non-binding arbitration by the American Arbitration Association ("AAA"). Judgment upon any award rendered may be entered in any court with jurisdiction over the matter within the State of New York. Reasonable attorneys' fees in the matter shall be awarded to the prevailing party. The arbitrator will provide the parties with a reasoned opinion, in

- writing, detailing the facts and rationale supporting their decision. If an award is rendered, the non-awarded party will be responsible for paying the fees and costs of the arbitrator. In the event that either of the Parties is dissatisfied with the decision reached by the arbitrator(s), such party may pursue adjudication of the dispute in a court of law. If the Parties proceed to litigation, the fees and costs of the arbitrator shall be paid equally by both. Venue for arbitration and litigation will be in the State of New York.
- i. This Agreement and its terms and provisions as well as the rights and duties of the parties hereunder shall be interpreted, governed by and construed in accordance with the laws of the State of New York, without regard to conflict of law principles.
  - j. This Agreement may be executed in counterparts, each of which shall be deemed an original, all of which together will constitute one contract. Signed copies transmitted electronically shall be treated as originals.
  - k. If the Term of this Agreement has elapsed, as measured beginning from the Effective Date, Destination Partner will be responsible for the operation and maintenance of the EVCS. Except for rights expressly granted under this Agreement, nothing in this Agreement will function to transfer any of Operator's software or Intellectual Property ("IP") rights to Destination Partner. Both Parties can mutually agree in writing for Operator to continue with the operation and maintenance of the EVCS.
  - l. Either party may be found in default ("**Defaulting Party**") due to (i) the Defaulting Party's inability to perform any of its obligations hereunder or failure to comply with any of the material terms and conditions hereof; or (ii) the Defaulting Party becoming insolvent or bankrupt. In either case, the Defaulting Party has sixty (60) days to cure the default after the receipt of written notice thereof. The default will be considered cured upon delivery of written notice by the Defaulting Party describing the implemented measures resulting in resolution and providing evidence of the resolution, and this Agreement will persist according to the Term herein. If the default is not cured within the allotted timeframe, the other party may choose to either continue this Agreement or terminate this Agreement forthwith upon written notice to the Defaulting Party.
  - m. This Agreement may be amended or modified only in writing which has been signed by the parties hereto.
  - n. If any term or provision of this Agreement is deemed to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement.