

Terms and Conditions of Smart Charge Service

1. Your Contract

- 1.1 We agree to supply the Service to you, and you agree to acquire the Service from us, at the prices and on the terms of your Contract.
- 1.2 Your Contract consists of: (i) your Application (including any Supplemental Agreement); and (ii) these Terms and Conditions. In case of any inconsistency, your Application (as may be supplemented or amended by any Supplemental Agreement) shall prevail over these Terms and Conditions.
- 1.3 By acquiring the Service from us, you unconditionally agree to these Terms and Conditions (available at www.smartcharge.com.hk/pdf/TnC.pdf), our Fair Usage Policy (available at www.smartcharge.com.hk/pdf/FUP.pdf) and our Privacy Statement (available at www.smartcharge.com.hk/pdf/privacy_statement.pdf), as they may be modified and/or supplemented from time to time without prior notice to you. Please check the relevant webpages regularly to see if there have been any modifications and/or supplements which may have been made.

2. Term

- 2.1 Your Contract for the Service becomes effective at the time you signed the Application (unless we determine otherwise) and continues until the expiry of the Commitment Period (if any), unless terminated earlier in accordance with your Contract.
- 2.2 Prior to the expiration of any Commitment Period, we may (but we are not obliged to do so) contact and offer you a renewal of the Service (“**Renewal Offer**”). If you agree to accept the Renewal Offer, your Service will be renewed in accordance with terms and conditions of that Renewal Offer.
- 2.3 Upon the expiration of the Commitment Period, if:
 - (a) we have not contacted you or you have not contacted us regarding a Renewal Offer;
 - (b) we have not been able to contact you regarding a Renewal Offer;
 - (c) you have not agreed to accept any Renewal Offer; and/or
 - (d) you have not provided us with any notice to terminate your Service,

we will continue to provide you with the Service in accordance with the terms of your current Contract at the then prevailing Month-To-Month Fee to be decided by us at our discretion on a monthly basis. Unless otherwise specified, any benefit, offer, rebate offered to you during the Commitment Period will no longer apply.

3. Your obligations

- 3.1 You must:
 - (a) provide us and our employees, representatives, agents and subcontractors with safe and timely access to your Installation Address within 30 days from the effective date of your Contract (or such other period as specified in your Application or agreed by us) to:
 - (i) enable our supply of the Service to you; and
 - (ii) enable us to perform any work on or in relation to the Equipment or, where lawful, a third party's equipment whether or not in connection with the supply of the Service.If you do not do so, we reserve the right to terminate your Contract and charge you the Application Cancellation Charge.
 - (b) ensure that your EV and all devices connected to the Equipment by you, or on your behalf, are technically compatible with the Equipment and that the EV and/or the devices comply with and are used in accordance with your Contract, our Instructions and any Applicable Law.
 - (c) not use or attempt to use the Service, or permit any party to use the Service, in a manner that:
 - (i) is unlawful, fraudulent, improper or unauthorised or for immoral purpose;
 - (ii) will violate or infringe the rights or privacy of others, including without limitation, any Intellectual Property Rights;
 - (iii) will cause annoyance, inconvenience or needless anxiety to any person;
 - (iv) will modify, sub-license, sell or disassemble any portion of the Equipment;

- (v) is not consistent with the purpose the Service is meant for; or
 - (vi) is for your own or any party's (excluding us) commercial gain.
 - (d) not damage, interfere with, cause any deterioration or degradation of the operation or performance of, or allow any of these acts to be done (including by a third party) to the Service (including our Equipment); and
 - (e) provide us with reasonable assistance to enable us to supply or maintain the Service (including notifying us promptly if you are aware of any material damage to the Equipment and ensuring our Equipment and your devices used in connection with the Service is maintained in good repair and working condition).
- 3.2 If you have subscribed to a Subscription Plan under your Contract, you must only use the Service for charging your Designated EV and not for any other EVs, with or without your knowledge or consent. You are required to notify us promptly if the registered licence plate number of your Designated EV is changed. In the event of default of the aforesaid, we may terminate or suspend the Service without prior notice.
- 3.3 You agree to look after the Equipment that we provide to you. For the Equipment which is owned by us, you must promptly return our Equipment to us in good working condition by allowing us access to the Installation Address at reasonable times of the day to collect and remove the Equipment upon termination of your Contract. In the event of loss or damage (fair wear and tear excepted) to our Equipment, you must pay us the repair and replacement of the Equipment, including any charges for loss, replacement or failure to return Equipment as specified in your Application.
- 3.4 You must reimburse us for any loss (including the costs of repairs) or damage caused to us as a result of loss, theft or damage to the Equipment to the extent that you have caused or contributed to that loss, theft or damage.
- 3.5 If you are not the owner of the Installation Address, you will need to seek approval from the owner for the installation and maintenance (including, without limitation, approval from the incorporated owners' committee or the building management office) of the Service. You agree to provide us with the necessary documentary proof of such authorisations and approvals if we so request.
- 3.6 If the delay of the completion date of installation of the Service is caused by you, we may impose additional service fees and/or other fees and/or charges due to the increase in costs and labour to complete the installation of Service for you.
- 3.7 Unless otherwise provided in your Contract, the Equipment provided under your Contract shall be non-exchangeable.
- 3.8 You shall indemnify and keep us, our employees, representatives, sub-contractors and agents fully and effectively indemnified against any Loss (including Consequential Loss) which we may suffer or incur arising out of or relating to or in connection with your Contract, including but not limited to the Loss resulting, directly or indirectly, from:
- (a) any act or omission (whether or not negligent) of you or any third party;
 - (b) any Claim by any person relating to supply of the Service or its use by you or any other person (with or without your knowledge or consent) or any delay or failure to provide the Service by us;
 - (c) any breach by you or any third party;
 - (d) any Claim by any person or liability of us under any Applicable Law in relation to the supply of the Service;
 - (e) our access to the Installation Address or the car parking or other spaces of which the Installation Address forms part,
- other than to the extent that it is the result of the willful breach of your Contract by us.

4. The Service

- 4.1 If you wish to make any changes to the particulars of the Service under your Contract, additional fees and/or charges may be payable, and you and us shall enter into new or further agreement(s) to your Contract, revising and/or supplementing the terms of your Contract accordingly.
- 4.2 We only provide one-time installation of the Equipment at the Installation Address. Subject to Clause 4.3, you must sign a new contract with us for any relocation and/or re-installation of the Equipment request.
- 4.3 If you have subscribed to a Subscription Plan under your Contract, you may request for relocation of the Service to a new address, subject to our feasibility assessment at your new address and your payment of (i) the Relocation Charge; and (ii) the Installation Service Fee. Unless we agree with you otherwise, all the existing terms and conditions of the Contract (save and except for the new Installation Address) shall remain unchanged after completion of the relocation.
- 4.4 You agree that the Fair Usage Policy applies to the Service and you may use the Service in a fair manner. We will consider use of the Service as unfair if you use the Service in any way which:
- (a) is designed to exploit, or results in the exploitation of, an acceptable usage limit of the Service (as determined by us from time to time); or

(b) causes or results in loss to us, problems to our Equipment or affects another customer.

In such event, we may reduce your charging current at a level determined by us and/or charge you in accordance with the prevailing thereafter rate of the Service or suspend or terminate the Service immediately.

4.5 You may be entitled to certain free premium(s) or to purchase certain premium(s) at a discount under your Contract. Separate terms and conditions will be applicable to such premium(s). If any premium is provided by a third party provider, you agree that we are not responsible for or liable to:

- (a) the act, negligence or omission from such third party provider;
- (b) any use of the premium; and
- (c) any transactions or dispute between you and such third party provider.

4.6 We provide warranty for the EV charger installed at the Installation Address under Buy & Own Plan as set out in your Application. The warranty will be subject to the following:

- (a) the warranty does not cover any EV charging cables in association with the EV charger;
- (b) the warranty does not cover damage to the EV charger caused by any misuse, negligence, abnormal power supply, or any Force Majeure Event,
- (c) no unauthorised alteration, modification or repair has been made to the EV charger;
- (d) the warranty does not include any external electrical work of the EV charger, nor the provision of consumables and software programmes; and
- (e) any repair and maintenance services beyond the scope of the warranty are subject to charges payable by you, and we reserve the right to withhold any such repair and maintenance services until full payment of such charges is received.

4.7 The actual charging performance of any EV charger under the Service will depend on many factors, including the model of the EV and its factory settings, the state and condition of the EV's battery and the car park's available power capacity.

5. Payment for the Service

5.1 You must pay for all the Charges for the Service (including the Equipment and any other goods and services we provide to you under your Contract) in a timely manner without deductions. All payments must be settled in Hong Kong dollars and by a method as described in your bill (if any).

5.2 You will be liable for all Charges for the Service provided to you, whether or not used by you or another person with or without your knowledge or consent and irrespective of whether the use of the Service was successful.

5.3 We may, at any time, require you to provide a deposit or prepayment to us. The amount of such deposit and prepayment will be determined by us. We will return to you the deposit, less any outstanding Charges you owe us, without interest within a reasonable time upon termination of your Contract. Prepayment will be used to offset the Charges payable by you for the Service and will not be refunded to you if your Contract is terminated before expiry of the Commitment Period.

5.4 Bills for the Service will be sent to your email address provided. To ensure you can continue to receive your bills, it is your responsibility to:

- (a) notify us promptly if your email address is changed;
- (b) check your junk email folder to see if your bill has been delivered there instead of your email inbox; and
- (c) contact us if you do not receive your bill.

5.5 If you do not pay any amount due under your Contract on time, we may charge you interest (calculated on a daily basis) at the rate of two per cent (2%) per month on the outstanding Charges until payment of the Charges are made in full.

5.6 We will generally not suspend or end the Service or your Contract for non-payment of your bill until at least 15 days after your payment was due. If however you have failed to pay on time a recent bill or have failed to pay a bill on many occasions, we may end the Service earlier than 15 days. If you request for Service re-activation after our suspension of the Service as a result of your breach of provision(s) of your Contract, you will be liable to pay a Reconnection Charge for our re-activation of the Service.

5.7 If you do not pay your bill, we may ask a debt-collection agency to collect the payment on our behalf. If we do so, you will have to pay us an extra amount for breaking your Contract. This will not be more than the reasonable costs and expenses we have to pay the agency, who will add the amount to your debt on our behalf (this will depend on the amount you owe us).

6. Ending or Suspending the Service

- 6.1 If you want to terminate your Contract after signing your Application but before provisioning of Service, we may require you to pay an Application Cancellation Charge.
- 6.2 We may without notice limit, cancel, terminate or suspend the provision of Service to you at any time:
- (a) in the event of an emergency or in order to provide resources to emergency and other essential services;
 - (b) if the supply or use of the Service is or is to become unlawful; and/or
 - (c) if in our reasonable opinion the provision of Service is liable to cause death or personal injury or damage to property.
- 6.3 We may limit, cancel, terminate or suspend the provision of Service at any time by notice to you:
- (a) if you do not pay any amounts due for the Service;
 - (b) if the use of the Service exceeds the fair usage level set by us from time to time or is inconsistent with the Fair Usage Policy and our Instructions;
 - (c) if there are technical difficulties or it is not feasible to provide the Service;
 - (d) if a third party supplier ceases to provide those things which are necessary for us to provide the Service to you;
 - (e) if you or any other person use(s) the Service in contravention of your Contract or for any illegal, unlawful or improper purpose, or you act in a way, which in our reasonable opinion, causes a nuisance or harassment to us or other customers;
 - (f) if we reasonably believe it is necessary to suspend the Service to:
 - (i) comply with an order, instruction, determination, statement, direction or similar pronouncement of a government or regulatory authority;
 - (ii) carry out scheduled maintenance, repair or upgrading of the Service, or any equipment, and facility;
 - (g) where our provision of the Service has been cancelled, terminated or suspended under Clause 6.3, we may require you to pay a Reconnection Charge when the Service is re-connected.
 - (h) if your Contract is terminated before the expiry of the Commitment Period, you must pay the Early Termination Charge or the monthly service fee for the remaining months of the Commitment Period, whichever is higher, to us immediately.
 - (i) notwithstanding any provision of your Contract, if you are receiving benefits under any promotion, whether relating to the Service, under your Contract or otherwise ("**Existing Benefit**"), we may deduct or cancel (at our discretion) the benefits or deduct the value of the benefits (as determined by us) from any of your accounts or seek reimbursement for the benefit from you.
- 6.4 If your Contract is terminated for whatever reasons, all licences, rights and privileges granted to you shall immediately cease.
- 6.5 Upon the expiration or termination of your Contract for Subscription Plan:
- (a) all the Charges for use of the Service up to and including on the date of termination and all other amounts owing by you to us will become immediately due and payable;
 - (b) you shall cease to use the Service; and
 - (c) you shall return the Equipment which is owned by us in accordance with Clause 3.3 or our instructions, and we are authorised to access the Installation Address at reasonable times for the purpose of collecting and removing the Equipment (where necessary) and/or terminating the Service.
- 6.6 If you have paid a deposit under your Contract, we will return the deposit to you in accordance with Clause 5.3.

7. Our rights when we provide the Service

- 7.1 Occasionally, we may need to, with or without prior notice to you:
- (a) interrupt or suspend the Service (for example, for maintenance, repair, testing or upgrade of the Equipment). If we do so, we will restore it as quickly as we can and we have no responsibility to pay you any compensation for any loss resulting from such interruption or suspension; or
 - (b) make minor changes to certain technical specifications.

- 7.2 We may cancel, suspend, restrict the Service or end your Contract for the Service by giving you as much notice as we can if:
- (a) the law requires us to do so;
 - (b) there is an emergency that affects our ability to provide the Service; or
 - (c) you become liquidated or bankrupt or appear likely to be.

8. Liability

- 8.1 Unless we have been grossly negligent, committed fraud or wilful default, we will not be liable to you for any losses you suffer or costs you incur because:
- (a) you are unable to use the Service and/or Equipment for any reason or there is a delay in its use;
 - (b) any device, hardware or software or service you use in connection with the Service is damaged or corrupted or fails to work;
 - (c) the Service does not work as you expect, does not meet your requirements or contains errors or defects or we fail to correct these; or
 - (d) there is a reduced level or failure to provide any service caused by any third party service providers including electricity provider.
- 8.2 Under no circumstances will we be liable for any indirect or consequential losses, even if advised of the possibility of such losses.
- 8.3 We will use due care and skill in providing the Service to you. However, given the nature of EV charging (including services and product that we do not own or control), we cannot promise that the Service will be continuous or fault free.
- 8.4 To the extent permissible by law, we limit our liability up to your Contract Value (even if we have been negligent) for all our liabilities under your Contract for the Service, the Equipment and/or any other goods and services we supplied or provided.

9. Matters beyond our reasonable control

Sometimes, we may not be able to do what we have agreed because of a Force Majeure Event. In these cases, we do not accept responsibility for the delay or otherwise not providing you with the Service in accordance with your Contract. Either you or we may end your Contract immediately if such event lasts for a continuous period of 30 days. Unless otherwise agreed by you and us, all costs and expenses in relation to the termination of the Service shall be borne by you and us in equal share.

10. Privacy

- 10.1 Where applicable, we collect, process, disclose, retain or use your Personal Data in accordance with our Privacy Statement (available at www.smartcharge.com.hk/pdf/privacy_statement.pdf).
- 10.2 If we request Personal Data from you, you may refuse to provide the Personal Data. However, we may decline to provide the Service to you.
- 10.3 You will, as soon as possible, tell us of any change of address or any other particulars provided to us which may affect our provision of Service to you.

11. Information provisioning

You will provide us with the information relating to you or your use of the Service we reasonably require:

- (a) to help us in complying with the applicable law and to report to any Government Agency regarding such compliance; and
- (b) to assess whether or not you have complied, are complying and will be able to continue to comply with all obligations under your Contract.

12. Changing the terms

The latest version of these Terms and Conditions can be found on our website (www.smartcharge.com.hk). We reserve the right to unilaterally change any provisions of these Terms and Conditions from time to time, with or without notifying you. Any changes to these Terms and Conditions shall take effect at the time of posting on our website, unless we specified otherwise.

13. Other things you need to know

- 13.1 No other person who is not a party to your Contract has any right under your Contracts (Rights of Third Parties) Ordinance (Chapter 623, the Laws of Hong Kong) to enforce any terms and conditions and/or benefit of your Contract.
- 13.2 You agree not to transfer or assign your Contract (or any part thereof) to any party, or to try to do so without our prior written consent. Any attempt by you to do so shall be void.
- 13.3 We may transfer our rights and obligations under your Contract (or any part thereof) to any person or entity without your consent. We can also use any of our Affiliates (if any), an agent or subcontractor to perform our responsibilities.
- 13.4 When we need to contact you or give notice to you, we will use your billing address, correspondence address, email address and/or facsimile, mobile or fixed phone number that you provide us for contacting you. If you need to contact us, please use the address on your last bill or any other postal address, email address or phone number we have given to you for that purpose.
- 13.5 Written notice or communication may be sent by us to you by hand, post, facsimile, email, SMS, bill insert, web notice and/or in such other manner as we may designate. The notice or communication sent by us shall be treated as received by you (a) three (3) days after posting, if sent by letter; (b) at the time of delivery, if delivered in person; (c) immediately upon faxing if sent by fax and the transmission report indicates that the fax transmission was successful; or (d) immediately upon sending the email, if sent by email, unless there is manifest evidence of delayed delivery or non-delivery.
- 13.6 A waiver of breach of any specific provision of your Contract shall not constitute a waiver of breach of other terms or a waiver of any prior or subsequent breach of the same term. Under no circumstance will there be any waiver from us unless such waiver is explicitly communicated in any official channel.
- 13.7 In the event of any discrepancy between the English version and any Chinese version, the English version shall prevail.
- 13.8 Each of the provisions of these Terms and Conditions is severable and distinct from the others, and if one or more of such provisions is or becomes invalid, illegal or unenforceable, such invalid, illegal or unenforceable provisions shall be deleted from these Terms and Conditions and no longer incorporated herein, but, the other provisions shall continue to be effective and binding on you and us.
- 13.9 Your Contract shall be governed by the laws of Hong Kong and any disputes arising out of or related to your Contract or the Service will be resolved in private in accordance with Hong Kong law through mediation and/or arbitration held within Hong Kong.

14. Special meanings

- 14.1 “**Affiliates**” means, in relation to an entity, any other entity which directly or indirectly controls, is controlled by, or is under common control with, such entity.
- 14.2 “**Applicable Law**” in relation to any person, action or thing means:
 - (a) any law, rule or regulation of Hong Kong or any country (or political subdivision of the country) which is applicable to a party;
 - (b) any obligation under any licence held by us in Hong Kong or any country (or political subdivision of the country); or
 - (c) any lawful determination, decision, direction, guideline, statement or code of practice in Hong Kong or any country (or political subdivision of the country) which is applicable to a party.
- 14.3 “**Application**” means the application form or any other paper or electronic application mechanism (including any Supplemental Agreement) in our prescribed form in respect of the Service provided by us to you.
- 14.4 “**Application Cancellation Charge**” means the cancellation and administration charges for the Service as we may specify from time to time; under normal circumstances, such charge shall not exceed HK\$5,000.
- 14.5 “**Buy & Own Plan**” is one of the service plans available for purchase by customers for the Service.
- 14.6 “**Charges**” means the charges and fees payable by you to us in respect of the provision of the Service provided by us and as specified by us in your Contract.

- 14.7 **Claim** means any claim or cause of action in respect of the Contract, including but not limited to, in contract (including a breach of warranty), in tort (including misrepresentation or negligence) or under statute.
- 14.8 **“Commitment Period”** means the commitment period / fixed term for the Subscription Plan under your Contract (if any) as specified by us in your Application, which period shall commence on the date of our completion of installation of the Service at the Installation Address.
- 14.9 **Consequential Loss** means any consequential, indirect, special, punitive, economic, incidental or collateral Loss (including, the loss of profits, goodwill, bargain or opportunities; or the loss or corruption of data; or the loss of anticipated savings or business, whether caused by negligence or otherwise and whether arising out of or relating to or in connection with the Contract, the Service, or any failure to supply or delay in supplying the Service).
- 14.10 **“Contract”** means the contract between you and us in respect of the Service provided by us to you, as specified in Clause 1.
- 14.11 **“Contract Value”** means in relation to (a) the Service with a Commitment Period, the total Charges for the Commitment Period payable by you to us under your Contract; or (b) the Service without a Commitment Period, the total Charges paid by you to us for the period from the date of your Contract to the date immediately preceding any incident giving rise to your claim.
- 14.12 **“Designated EV”** means your EV with the designated registered licence plate number so set out in your Application (such registered licence plate number is subject to change in accordance with Clause 3.2), available for charging under the Subscription Plan of your Contract.
- 14.13 **“Early Termination Charge”** means the early termination charge for the Service provided by us as specified in your Application, if any.
- 14.14 **“Equipment”** means the hardware, equipment, system and/or device (if any) provided by us to make available the Service to you.
- 14.15 **“EV”** means electric vehicle.
- 14.16 **“Fair Usage Policy”** means our Fair Usage Policy in respect of the Service, covering your Contract, the Application and the description of the Service (including the service plan), the Charges (which can be found at www.smartcharge.com.hk/pdf/FUP.pdf), and where applicable, as may be amended by us from time to time.
- 14.17 **“Force Majeure Event”** means anything outside our reasonable control, including, without limitation, technical infeasibility or limitation, industrial disputes of any kind, war declared or undeclared, act of terrorism, blockade, disturbance, a natural disaster (such as lightning, earthquake, storm, flood, explosion or meteor), law or any power lawfully exercised by a Government Agency, any change in any applicable law, rule or regulation of Hong Kong to the Service or your use of the Service, inability or delay in granting governmental or other approvals, consents, permits, licenses or authorities, or electricity shortage, outage or degradation or third party supplier unable to supply the necessary equipment which we cannot reasonably control.
- 14.18 **“Government Agency”** means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.
- 14.19 **“Hong Kong”** means the Hong Kong Special Administrative Region of the People's Republic of China.
- 14.20 **“Installation Address”** means the car parking space or premises where the Equipment for the provision of the Service is installed and/or used, as specified in your Application, as well as any other premises which the Service as may be used from time to time, as agreed by us.
- 14.21 **“Instructions”** means instructions and notifications given by us to you or users of the Equipment from time to time for the operations of the Equipment and/or other devices provided by us as part of the Service.
- 14.22 **“Intellectual Property Rights”** means all patents, copyrights, design rights, tradenames, trademarks (whether or not registered), database rights, service marks and any pending applications relating to the foregoing, trade secrets, know-how which are recognised as intellectual property rights in the eye of laws, and all other intellectual property rights, third party's rights and proprietary rights which may exist in any part of the world.
- 14.23 **Loss** includes loss (including, loss of revenue), damage, cost, expense, fine, Claim, demand, liability and charge.
- 14.24 **“Month-To-Month Fee”** means the month-to-month service fee for the Service payable in respect of the Service provided by us on a monthly basis (i.e. without a Commitment Period), as set out in our website (www.smartcharge.com.hk) from time to time.
- 14.25 **“Personal Data”** has the same meaning given to it in the Personal Data (Privacy) Ordinance (Chapter 486, the Laws of Hong Kong).
- 14.26 **“Reconnection Charge”** means the reconnection charge for the Service provided by us as specified in your Application, if any.

- 14.27 “**Relocation Charge**” means the relocation charge for the Service provided by us as specified in your Application, if any.
- 14.28 “**Service**” means the Smart Charge services in relation to EV charging purpose as specified in your Application, which may include, the installation of Equipment and provision of EV charging services for Subscription Plan and the installation of Equipment for Buy & Own Plan, and the Equipment.
- 14.29 “**Subscription Plan**” is one of the service plans available for subscription by customers for the Service.
- 14.30 “**Supplemental Agreement**” means any other terms and conditions agreed by you in the course of our provision of the Service to you.
- 14.31 “**Terms and Conditions**” means these Terms and Conditions of Smart Charge Service, as may be revised and/or supplemented from time to time.
- 14.32 “**We**” means Smart Charge (HK) Limited, the service provider of the Service, including and “**us**” and “**our**” shall be construed accordingly.
- 14.33 “**You**” means the customer who purchases or subscribes to the Service, and “**your**” shall be construed accordingly.