

# Chargefox Site Host Terms & Conditions

*Last updated February 2024*

## 1. Your acceptance

- 1.1 These are the terms and conditions (**Terms**) on which Chargefox Pty Ltd ACN 621 161 215 (referred to as **Chargefox, we, our** or **us**) permits site hosts (referred to as **you** or **your**) to:
- (a) add your charging stations and related equipment to Chargefox's open-platform network of electric vehicle charging stations (**Charging Stations**) and all support network infrastructure (**EVSE**) and services supplied by Chargefox in respect of the charging stations (**Chargefox Network**); and
  - (b) access and use the web portal operated and maintained by Chargefox in respect of the Charging Stations (**Chargefox Network Portal**), the Chargefox apps which provide access to the Chargefox Network Portal (**Chargefox Apps**) and the Chargefox website, located at chargefox.com (**Website**).
- 1.2 By activating your subscription, you agree and consent to the terms of:
- (a) these Terms;
  - (b) the Chargefox Network Terms and Conditions of Use (a copy of which is available here and on our Website); and
  - (c) the Chargefox Privacy Policy (a copy of which is available here and on our Website). (collectively, the **Documents**)
- 1.3 You acknowledge that Chargefox may, from time to time, review and update the Documents to take account of new laws, regulations, products, technology or other relevant changes in circumstances. Your subscription to and use of the Chargefox Network, Chargefox Apps and Website will be governed by the most recent Documents available on the Website. By continuing to use the Chargefox Network, Chargefox Apps or Website, you agree to be bound by the most recent Documents. Please check the Chargefox Network Portal regularly for updated versions of these documents.

- 1.4 Where a specifically negotiated agreement has been entered into between Chargefox and you in relation to the Chargefox Network Services then the terms of the specifically negotiated agreement will apply and the order of precedence shall be (a) specifically negotiated agreement (b) these Terms. The specifically negotiated agreement will prevail to the extent of any inconsistency with these Terms.

## 2. Chargefox Network Services and Charging Stations

- 2.1 By agreeing to these Terms, you agree and give your consent for the charging stations nominated by you (**Charging Stations**) to be added to the Chargefox Network.
- 2.2 Commencing on the date on which your first Charging Station is registered and activated on the Chargefox Network and ending on the date on which your subscription is terminated under clause 12 (**Term**), Chargefox:
- (a) grants to you a non-exclusive, non-transferable, royalty free, personal licence to access and use Chargefox Network Portal in order for you to access certain data in respect of the Charging Stations, regardless of the device from which the portal is accessed, solely for your reasonable business purposes; and
  - (b) will:
    - (i) operate, administer and support the network infrastructure in respect of the Chargefox Network, including the Chargefox Network Portal;
    - (ii) provide two RFID charge cards per Charging Station (or a different number as agreed between you and Chargefox)
    - (iii) provide a help desk facility between 9am–5pm AEST every day other than a Saturday, Sunday or public holiday observed in Victoria, Australia (Business Days); and
    - (iv) unless otherwise agreed in writing with you, settle and pay to you into the bank account nominated by you, quarterly in arrears, any payments from any person who uses any Charging Station (**End Users**) in respect of the Charging Stations less the End User Transaction Fee (defined below),

(together **Chargefox Network Services**).

- 2.3 Chargefox will retain 5% of any amounts charged to End Users in respect of each Charging Station (**End User Transaction Fee**).
- 2.4 You agree that End Users' access or use of the Chargefox Network will be governed by the Chargefox Network Terms and Conditions of Use (the latest version of which can be accessed on our Website).
- 2.5 You and Chargefox:

- (a) represent and warrant that you have the power and authority to enter into and be bound by these Terms; and
- (b) must comply with any and all laws, including any regulation, mandatory code of conduct or judgment (Laws) and maintain all authorisations and licences in respect of the performance of your obligations under these Terms.

2.6 You must:

- (a) in respect of any Charging Station that has been installed, moved or deactivated, notify Chargefox in writing at least 10 Business Days prior to such installation, movement or deactivation and the address or new address of that Charging Station (as applicable);
- (b) notify Chargefox at least 1 Business Day prior to any Charging Stations undergoing scheduled maintenance, service, repair or replacement with the date, time and duration of the outage;
- (c) notify Chargefox within 5 Business Days of any Charging Station that is defective or non-operational and not intended to be replaced or repaired by you;
- (d) Unless otherwise agreed in writing by Chargefox, you must, at your own cost, ensure that at all times during the Term its Charging Stations clearly display up-to-date labelling and signage that comply with the Charging Station guidelines and instructions as advised by Chargefox from time to time including the following information:
  - (i) the station number;
  - (ii) port labels; and
  - (iii) usage instructions.
- (e) Chargefox will make available to you stickers containing the information set out in clauses 2.6(d)(i), (ii) and 3(d)(iii) and the Chargefox Logo, which you must install and display on the Charging Stations in accordance with the Guidelines. Chargefox may remove, or require you to remove (in which case you will promptly remove) any Chargefox labelling and signage (including the Chargefox Logo) displayed on the Charging Stations as referred to in clause 2.6(d):
  - (i) where such labelling and signage does not comply with the Guidelines; or
  - (ii) upon the expiry or termination of this agreement.
- (f) use best endeavours to prevent unauthorised access to any of the Chargefox Network Services, including the protection of any login credentials for the access and use of the Chargefox Network Portal, and notify Chargefox of any need to suspend or change any credentials promptly after becoming aware of such a need;
- (g) not attempt to gain unauthorised access to the Chargefox Network or the Chargefox Network Services or their related systems networks;

- (h) be responsible for ensuring that your Charging Stations are on the recommended firmware provided by the charger manufacturers. You must ensure firmware upgrades are coordinated with, and approved by, Chargefox;
- (i) not interfere with or disrupt the integrity of the Chargefox Network, the Chargefox Network Services, or any third party data contained therein; and
- (j) not engage another supplier for the provision of services to the Charging Stations which are the same or similar to the Chargefox Network, Chargefox Network Portal or Chargefox Network Services, without Chargefox's prior written consent.

2.7 You represent and warrant to Chargefox on each day during the Term that:

- (a) you are in compliance with all applicable Laws and have maintained all authorisations and licences required in connection with any Charging Station and any related EVSE, including the installation, operation, maintenance and disposal of any such Charging Station and EVSE;
- (b) unless otherwise agreed in writing between the parties, you have in place insurance with a reputable insurer for:
  - (i) public liability for the minimum amount of \$20 million concerning one single event; and
  - (ii) such other insurances as are reasonably required for the commercial use of the Charging Stations and their listing on the Chargefox Network Portal.
- (c) the electrical usage to be consumed by your Charging Stations does not violate or otherwise conflict with the terms and conditions of any applicable electrical purchase or other agreement, including any lease, to which you are a party.

2.8 you will ensure all the Charging Stations are maintained regularly and remain in good working order during the term of this Agreement. You must nominate a contact person who is responsible for all operational issues relating to the Charging Stations. If at any time Chargefox becomes aware that a Charging Station has ceased to be operational or has a defect, Chargefox will notify you and you must remedy the matter within 30 days from receipt of such notice or as soon as reasonably practicable. If it is not practicable to remedy within such period, you must provide Chargefox with a diagnosis report and update on the matter regularly. If the matter is not remedied within 30 days of the notice, Chargefox may suspend the relevant Charging Station from the Chargefox Network until the defect is remedied or if you have provided regular updates and a remediation plan to Chargefox. Your failure to do so may result in your relevant Charging Station becoming removed from the Chargefox Network. If Chargefox suspends or removes the relevant Charging Stations pursuant to this clause, you:

- (a) will not be entitled to any refund of Fees; and
- (b) in the case of removal of the relevant Charging Station from the Chargefox Network, must remove Chargefox stickers and arrange for the Charging

Station(s) to be disconnected from the Chargefox platform within 10 days at your cost.

Persistent failure to remedy a defect will be considered a material breach of this agreement entitling Chargefox to terminate the Agreement under clause 12.3.

- 2.9 For a Charging Station that is available to the general public (including those located in facility that is open to the general public but may have restricted opening hours or require as a condition of public access the payment of entry fees or a booking such as public car parks and caravan parks (**Public Charging Stations**), you must have maintenance agreement in place with a service provider that is appropriately qualified to repair and service the Charging Stations.
- 2.10 For Public Charging Stations, you must, at least once every 12 months during the Term, and no less than the manufacturers' recommendation, conduct a preventative maintenance service including an inspection of each of the Charging Stations in respect of compliance with this agreement and if requested by Chargefox, provide Chargefox with a copy of the preventative maintenance report and any written report from the inspection, including photos of the Charging Stations and their surroundings.
- 2.11 Where a defect or fault with a Charging Station poses a risk to safety and health, you must notify Chargefox as soon as you become aware of the defect or fault and use best endeavours to rectify the defect or fault immediately (or restrict access to the relevant Charging Stations to address the risk) within 4 hours of becoming aware of the defect or fault. Failure to comply with this clause and rectify the defect within the specified time period may result in suspension or removal of the Charging Station from the Chargefox Network,
- 2.12 To the maximum extent permitted by law, you agree to hold Chargefox and its personnel harmless against any liability, claims, proceedings, costs, expenses and damages which Chargefox or its personnel arising from or in connection with:
- (a) a failure by you to comply with Charging Station or EVSE manufacturer's instructions, or Chargefox's instructions;
  - (b) your breach of these Terms;
  - (c) your failure to comply with your obligations under any applicable laws and regulations;
  - (d) your uploading of information to, access to, or use or misuse of the Chargefox App or Chargefox Network Portal; and
  - (e) any amounts for which Chargefox becomes liable to any third party, including any loss, damage, liability (including legal and other professional costs) arising out of a claim made by End User in respect of damage caused to them, their electric vehicle or other properties, directly or indirectly, by your Charging Station or EVSE,

except to the extent that the Loss was directly caused or contributed to by an act or omission of Chargefox.

2.13 Chargefox may modify or update the Chargefox Network Portal without notice.

2.14 You acknowledge and agree that:

- (a) the Charging Stations and related equipment used for the Charging Stations must be a supported hardware as listed on the Website (**Supported Hardware**), which Chargefox may update from time to time (a copy of which is available at <https://support.chargefox.com/hc/en-au/articles/6954291325071-Supported-Hardware-List>);
- (b) if a Charging Station is not a Supported Hardware, and at the time of nomination:
  - (i) is already scheduled to be tested for possible future inclusion as a Supported Hardware, you may request Chargefox test the Charging Station for compatibility with the Chargefox Network, and such testing will be performed at Chargefox's cost;
  - (ii) is not scheduled to be tested for possible future inclusion as a Supported Hardware, you may request Chargefox test the Charging Station for compatibility with the Chargefox Network, and such testing will be performed at your cost for a fee of \$2,500 (excluding GST) per charge type;
  - (iii) Chargefox does not provide any guarantee that after such testing, the Charging Station will meet the requirements to be included as Supported Hardware; and a Charging Station that is not Supported Hardware will not be supported on the Chargefox Network and therefore will not be added to the Chargefox Network.

### 3. Fees and payment

3.1 The fees payable by you include:

- (a) the network service fee (**Network Services Fee**); and
- (b) 5% per annum of any invoiced amount not received by Chargefox by the payment due date in the relevant invoice (**Late Payment Fee**) (together with the End User Transaction Fee, the **Fees**).

3.2 You must pay the Fees as set out in the tax invoice issued by Chargefox unless otherwise agreed by the parties in writing.

3.3 Upon receipt of such tax invoice from Chargefox, you must pay the amounts set out in that tax invoice by the date that is 30 days after the date of the tax invoice. If any

invoiced Fees are not received by Chargefox by the payment due date in the relevant invoice, Chargefox may charge the Late Payment Fee in respect of that invoice.

3.4 If these Terms are terminated in accordance with clause 12:

- (a) in the case of clause 12.3 by Chargefox or clause 12.2 by you, you will not be entitled to any refund of any Fees as a result of such termination; and
- (b) in the case of clause 12.2 by Chargefox, or clause 12.3 by you, Chargefox will refund to you a pro-rata portion of any Fees paid in advance.

3.5 Unless the Fees are pre-paid in advance or otherwise agreed by the parties in writing, the Fees payable to Chargefox by you under this Agreement may be subject to an increase each year by a percentage amount equal to the percentage increase in the CPI during the preceding year, in respect of the Fee (except for the Late Payment Fee). CPI means the "Weighted Average of Eight Capital Cities: All Groups Consumer Price Index" published by the Australian Bureau of Statistics (or such substitute index as may be published by the Australian Bureau of Statistics from time to time).

3.6 The parties agree to review the Fees if the costs incurred by Chargefox in providing the Chargefox Network Services materially increases.

## 4. Content on Chargefox Network Portal

4.1 The content in the Chargefox Network Portal and any other information provided to you is for general information purposes only. You acknowledge and agree that, while Chargefox has attempted to provide accurate information regarding the status of your Charging Stations through the Chargefox Network Portal, such information may change frequently and in no event will Chargefox be responsible for the accuracy, usefulness or completeness of the content in the Chargefox Network Portal, nor does it warrant that any such content is the most current version thereof. Chargefox does not warrant or make any representations as to any third party products or services described or referred to in the Chargefox Network Portal, the Chargefox Apps, on the Website or otherwise. Any use of the content by another person or organisation is at the user's own risk.

4.2 Chargefox may modify any information, including in relation to your Charging Stations or EVSE, in the Chargefox Network Portal at its absolute discretion for any reason, without notice. All updates and modifications to the Chargefox Network Portal, Chargefox Apps or the Website will be subject to these Terms and the Chargefox Network Terms and Conditions of Use.

**4.3** If any Charging Station is not, or ceases to be, a Public Charging Station, you must notify Chargefox as soon as practicable so that the status of that Charging Station can be updated to a Private Charging Station and/or removed from the Chargefox App. If there are any conditions to access the Public Charging Station such as



requiring the payment of entry fees, opening times or booking, you must also notify Chargefox.

## 5. Access to Chargefox Network Portal

- 5.1 Chargefox does not warrant that you will have continuous access to the Chargefox Network Portal, the Chargefox Apps or Website. Chargefox will not be liable if the Chargefox Network Portal, Chargefox Apps or Website are unavailable to you due to computer downtime attributable to malfunctions, upgrades, preventative or remedial maintenance activities or interruption in telecommunications supply.
- 5.2 Chargefox cannot and does not guarantee the security or confidentiality of these communications or the security of the Chargefox Network Portal, Chargefox Apps or Website.
- 5.3 Direct connection with Charging Stations
  - (a) in order for Chargefox to provide the services under this Agreement, Chargefox requires direct, unabated and unabridged connection between the Charging Stations and Chargefox Portal and Chargefox App.
  - (b) You must:
    - (i) notify Chargefox immediately if you become aware of any matter which may affect such connection, including your contractor installing or adding any devices, systems, apps or otherwise in the Charging Stations or in between the network connection between the Charging Stations and Chargefox Portal or Chargefox App that may affect such connection;
    - (ii) where your contractor's devices, systems or apps have access to charging data, procure your contractors to comply with the data processing and handling requirements required by Chargefox; and
    - (iii) procure your contractors to provide reasonable assistance to Chargefox on any investigations relating to faults, outages, service disruptions or any data breach or cyber security incidents.
  - (c) Chargefox will not be responsible for any failure to provide services under this Agreement if its connection to the Charging Stations is affected or disrupted by an action or non-action of you or your contractor.
- 5.4 You agree that all data collected by Chargefox in connection with the performance of this Agreement and operation of the Chargefox Network, including your usage data, will vest and be owned by Chargefox on creation and may be used by Chargefox in its discretion, subject to the terms of Chargefox's Privacy Policy.
- 5.5 Chargefox hereby grants to you an irrevocable, worldwide, royalty-free, transferable licence during the term of the agreement to use the Chargefox data for the purposes of you receiving the full benefit of the Chargefox Network Services pursuant to this



agreement. In exchange for this licence, you agree to not disclose any Chargefox data to any third party unless (a) Chargefox has provided its prior written consent to such disclosure in writing and you have procured that the relevant third party will only use the Chargefox data strictly in accordance with the consent provided; or (b) such disclosure is required by law and only to the extent required by law; (c) must take all reasonable steps to ensure that the Chargefox data is protected from misuse, interference, loss and unauthorised access, modification or disclosure; (d) must ensure that at all times during the term of this Agreement, any Chargefox data which is in your possession or control from time to time is stored in a manner which enables the Chargefox data to be easily identified separately from any of your data or a third party's data; and (e) removed from the Subscriber's systems and files if required.

5.6 Each party must comply with all applicable privacy laws and the Chargefox Privacy Policy in relation to dealing with any data arising from the Chargefox Network Portal, the Chargefox App, and the Website.

## 6. Taxes

6.1 Unless expressly stated otherwise, prices provided by Chargefox under or in connection with these Terms are exclusive of all taxes, imposts, levies, duties, excise and charges, deductions or withholdings, however described and which are imposed by Law (other than any tax imposed on, or calculated having regard to, net income) (**Taxes**), and you will not be entitled to any additional payment from Chargefox on account of any liability for Taxes incurred in connection with these Terms.

6.2 If Chargefox is required by Law to make a deduction or withholding for or on account of any Taxes from a payment, no additional payment will be made to you.

### 6.3 GST

(a) Unless the contrary intention appears, terms used in this clause 6 which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Law) have the same meaning given in the GST Law.

(b) Unless otherwise expressly stated in this agreement, all amounts payable or consideration to be provided under or in accordance with this agreement are exclusive of GST.

(c) If GST is or becomes payable on a supply made under or in connection with this agreement, the recipient of the taxable supply must pay to the party making the supply an additional amount equal to the amount of GST payable on or for the taxable supply, subject to the recipient receiving a valid tax invoice in respect of

the supply at or before the time of payment (unless otherwise agreed under this clause). Payment of the additional amount must be made at the same time as payment for the taxable supply is required to be made in accordance with this agreement.

- (d) If a party becomes liable for any penalties or interest as a result of a late payment of GST, where that late payment is as a direct result of a failure of another party to comply with the terms of this clause 6, that other party must pay to the first party an additional amount on demand equal to the amount of those penalties and interest.
- (e) If the GST payable in relation to a supply made under or in connection with this agreement varies from the GST amount paid by the recipient in respect of that supply due to an adjustment event, then the other party will apply to the Commissioner for a refund of and provide to the recipient a corresponding refund or credit and the other party must issue a corresponding adjustment note.
- (f) The parties agree that by entering into this Agreement, they are parties to a Recipient Created Tax Invoice agreement as outlined in GSTR 2000/10. Where permitted by GST law, the parties also agree that in respect of each taxable supply of the disbursements made by Chargefox to you under this Agreement **(RCTI Supplies)**:

(i) Chargefox is authorised to issue a Recipient Created Tax Invoice to you and will issue a Recipient Created Tax Invoice in respect of each RCTI Supply made under this Agreement within 28 days of the making of, or determination of, the value of, that RCTI Supply:

- (i) You will not issue a tax invoice in respect of any RCTI Supply made to Chargefox under this Agreement unless required by applicable GST law;
- (ii) Chargefox warrants that it is registered for GST purposes and will notify you if it ceases to be so registered or ceases to comply with any of the relevant requirements of GSTR 2000/10; and
- (iii) You warrant that you are registered for GST purposes and will notify Chargefox if you cease to be so registered or ceases to comply with any of the relevant requirements of GSTR 2000/10; and
- (iv) Each party acknowledge that Chargefox must not issue a Recipient Created Tax Invoice in respect of a RCTI Supply to the extent that either party has failed to comply with any of the relevant requirements of GSTR 2000/10.
- (v) The parties acknowledge that Chargefox is treated as a separate supplier under section 153-50 of the GST Act in respect of all supplies made to third parties under this arrangement and that invoices for charging fees which will be disbursed to you under this agreement will be issued to third parties in the name of Chargefox in its capacity as principal in making the supply.

## 7. Carbon Abatement

- 7.1 Chargefox provides the Buyer with the opportunity, where eligible, to participate in carbon abatement projects, enabling certification of the positive contributions your Charging Station is making to the local community and environment. Ongoing financial or other benefits for you may also be available due to participation.
- 7.2 Any emissions reductions, environmental attributes, carbon abatement or offset rights or activities whatsoever which are associated with, are potentially available from, or arise from or in connection with the use of our Products and / or any Charging Station that utilises our Products which could potentially give rise to the creation of Carbon Credits are hereby retained by and vested in Chargefox (or persons nominated by Chargefox).
- 7.3 You agree that Chargefox (or persons nominated by Chargefox) will be the sole owner of such emissions reductions, environmental attributes and related rights, will have authority as the project proponent to create related Carbon Credits under any relevant Carbon Credit Scheme, and that Chargefox may deal with any Carbon Credits as they see fit, including by assignment or sale to any third party. You agree to take all action reasonably necessary to affect the assignment or to provide for the creation and vesting of Carbon Credits, emissions reductions or related rights to Chargefox (or persons nominated by Chargefox), and not to take any action that would create a third party interest, ownership, encumbrance or other restriction in respect of such Carbon Credits, emission reductions, environmental attributes or related rights.
- 7.4 For the purposes of this clause 7:
- (a) Carbon Credit means any right, interest, unit, credit entitlement, benefit or allowance to emit (at present or in the future) greenhouse gas or carbon emissions under any Carbon Credit Scheme; and
  - (b) Carbon Credit Scheme means any voluntary, regulatory or legal regime, scheme or arrangement arising from or in connection with any removal, limitation, reduction, avoidance, abatement, offset, sequestration or mitigation or conservation of carbon dioxide or GHG emissions or equivalence from the atmosphere, including the creation, transfer, renewal, replacement or variation of any associated Carbon Credits.
  - (c) Product means any product or service provided by Chargefox including but not limited to the Chargefox Network, Chargefox Network Portal, Chargefox Apps, Charging Stations and Website.
- 7.5 Chargefox encourages all site hosts to use renewable energy to power their Charging Stations, where possible.

## 8. Intellectual property

8.1 For the purposes of this clause 8, Intellectual Property Rights means all intellectual property rights throughout the world, including all:

- (a) rights in relation to inventions, including patent rights and applications;
- (b) all trade names and registered or unregistered trademarks and applications, including service marks (Marks);
- (c) all trade names and registered or unregistered trademarks and applications, including service marks (Marks);
- (d) licences;
- (e) know-how and trade secrets;
- (f) proprietary processes and formulae, source and object code, algorithms;
- (g) design;
- (h) circuit layouts; and
- (i) all documentation and media relating to the above, such as, without limitation, manuals and records; and
- (j) moral rights

8.2 As between you and Chargefox, Chargefox owns all Intellectual Property Rights in and to:

- (a) any hardware, software, firmware, tools, documentation, reports, data, diagrams, procedures, plans or other material (Material) provided, created or developed by or on behalf of Chargefox in connection with these Terms; and
- (b) any modifications or enhancements to such Material, and you assign to Chargefox any modifications or enhancements made by or on behalf of you immediately from creation, (Chargefox IP).

8.3 Except as otherwise agreed in writing by Chargefox, you must not:

- (a) create derivative works based on any Chargefox Network Service;
- (b) access, copy, frame or mirror any part or content of the Chargefox Network Services for any improper purpose, including in order to build a competitive product or service, but which, for the avoidance of doubt, does not include copying or framing on your own intranet or otherwise for its own internal business purposes;
- (c) rent, lease, reverse engineer, decompile or disassemble any Chargefox Network Service;
- (d) directly, indirectly or take steps to register or apply for, any Chargefox IP or any Intellectual Property Rights substantially similar to any Chargefox IP; and
- (e) remove, conceal or cover any Marks used by Chargefox in connection with the Chargefox Network Services or any other markings, labels, legends or Marks

installed or placed on any Charging Station or any related EVSE for use in connection with any Charging Station.

8.4 Upon termination of your subscription, you must immediately cease all use of any Marks used by Chargefox in connection with the Chargefox Network Services.

## 9. Confidentiality

9.1 In respect of you and Chargefox, all information (whether oral or written):

- (a) about or in connection with the business or affairs of either you or Chargefox (including your related bodies corporate's operations, administration, finances, customers, contractors or shareholders), disclosed by either you or Chargefox during the course of any discussion between the Parties, oral or written, including any discussions prior to the date of these Terms (Discussions), created by you or Chargefox in connection with the Discussions, or which otherwise becomes known to the other party; or
- (b) designated by you or Chargefox as being confidential, is confidential information (Confidential Information).

9.2 Subject to clause 9.3, you and Chargefox agree to:

- (a) keep strictly confidential all Confidential Information of or relating to the other, including the existence of such Confidential Information;
- (b) use or copy the other's Confidential Information only for the purposes of these Terms; and
- (c) ensure that no director, officer, employee, contractor, professional adviser or agent of you or Chargefox, or your related bodies corporate (Representative) or other person who has access to the other party's Confidential Information through or on behalf of it will use, copy or disclose the other party's Confidential Information, other than for the purposes of these Terms.

9.3 You and Chargefox must, and must ensure that no Representative or other person who has access to the other party's Confidential Information through or on behalf of it (it and each such Representative or person a Disclosing Party) will, not disclose any Confidential Information of the other party except:

- (a) where the Disclosing Party is required to do so by Law;
- (b) with the prior written consent of the other party; or
- (c) as otherwise expressly permitted under these Terms, provided that it will take all reasonable steps to:
- (d) only disclose that part of the Confidential Information which is required or permitted to be disclosed;
- (e) as soon as practicable, where the disclosure is required by Law, advise the other party of the requirement placed upon it; and

- (f) ensure that any party to whom it discloses the Confidential Information is aware of the confidential nature of the Confidential Information and has agreed to comply with the confidentiality obligations under these Terms.

9.4 Within 10 Business Days of termination of your subscription, you and Chargefox must return, destroy or permanently de-identify any of the other party's Confidential Information in its possession or control, except to the extent and for so long as that Confidential Information is required to be retained for the purposes of Law, litigation and performance of its obligations under these Terms.

## 10. Warranties and consumer guarantees

10.1 Chargefox's Network Services are provided on an 'as is' and 'as available' basis. Your use of the Chargefox Network, Chargefox Apps and Website is at your own risk.

10.2 Any representation, warranty, condition, guarantee or undertaking that would be implied in these Terms in relation to any service supplied by Chargefox by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law, including any implied warranties of acceptable quality or fitness for a disclosed purpose.

10.3 Nothing in these Terms excludes, restricts or modifies any consumer guarantee, right or remedy conferred on you by the Australian Consumer Law or any other applicable law that cannot be excluded, restricted or modified by agreement.

## 11. Limitations of liability

11.1 Chargefox will not be liable to you for any loss or damage to you or your Charging Station, indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data, loss of reputation or loss of revenue (irrespective of whether the loss or damage is caused by or relates to breach of contract, tort (including negligence), statute or otherwise) arising in connection with your subscription to and use of the Chargefox Network, the Chargefox Apps, the Website and all links to or from the Website unless, and to the extent that, such damage or loss is directly caused by:

- (a) the gross negligence of Chargefox; or
- (b) the fraud or wilful breach by Chargefox of any of its obligations under these Terms, provided that such loss or damage is reasonably foreseeable and is not caused by something beyond Chargefox's control (including, for the avoidance of doubt, any act or omission of any third party, any force major event, any damage of any kind of your Charging Station or the premises on which the Charging Station is located caused by an End User or otherwise, or any breach by you of these Terms).



- 11.2 Subject to other subclauses in this clause 11, to the maximum extent permitted by law, you agree that the maximum aggregate liability of Chargefox for all proven losses, damages and claims arising out of or in connection with these Terms or a supply under these Terms, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the total amount of Fees paid to and received by Chargefox in the calendar year prior to the event giving rise to the claim.
- 11.3 Neither you nor Chargefox will be liable for any consequential Loss suffered by the other party, including any loss of revenue, profit or anticipated savings, or any loss suffered as a result of business interruption.
- 11.4 Neither you nor Chargefox will be liable for any Loss suffered by the other party, including in respect of any loss of data, as a result of:
- (a) electrical outages, power surges, brown-outs, utility load management or any other similar electrical service interruptions whatever the cause;
  - (b) interruptions in wireless or mobile services;
  - (c) interruptions to the Chargefox Network attributable to unauthorised intrusions; or
  - (d) interruptions in services provided by any internet service provider.

## 12. Termination

- 12.1 For the purposes of this clause 12, Insolvency Event means, in relation to you or Chargefox, any of the following:
- (a) you or Chargefox ceases or takes steps to cease to conduct its business in the normal manner;
  - (b) you or Chargefox enters into, or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them;
  - (c) you or Chargefox is unable to pay its debts when they are due or is deemed to be insolvent under the Corporations Act 2001 (Cth);
  - (d) a liquidator or provisional liquidator is appointed to you or Chargefox or a receiver, receiver and manager, official manager, trustee or similar official is appointed over any of the assets or undertakings of you or Chargefox;
  - (e) an application or order is made or a resolution is passed for the winding up of you or Chargefox; or
  - (f) any act or event analogous or having a substantially similar effect to any of the events specified above.
- 12.2 You or Chargefox may terminate your subscription with at least 3 months' written notice to the other party.
- 12.3 You or Chargefox may terminate your subscription with immediate effect if:

(a) a material breach of these Terms has been committed by the other party and, where such breach is capable of remedy, that breach has not been rectified within 20 Business Days of receipt of written notice of that breach; or

(b) an Insolvency Event occurs in respect of the other party.

12.4 Chargefox may terminate your subscription with immediate effect if you have not paid any Fees due and payable within 20 Business Days of the relevant invoice date.

12.5 Without limiting clause 3, following termination of your subscription, Chargefox will take reasonable steps to remove your Charging Stations from the Chargefox Network and the Chargefox Network Portal within 5 Business Days of termination. Any amounts charged to End Users in respect of your Charging Stations which have been:

(a) accrued prior to termination but remain unpaid; and

(b) incurred between the date of termination and the Charging Station's removal from the Chargefox Network, will be remitted to you as disbursements, less the End User Transaction Fee, as soon as practicable and in any case within 20 Business Days following termination of your subscription.

## 13. Force Majeure

13.1 Chargefox will not be responsible or liable for any failure or delay in the performance of the Chargefox Network Services or any of its obligations under these terms arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services. Chargefox will use reasonable endeavours which are consistent with accepted practices in its industry to resume performance as soon as practicable under the circumstances.

## 14. Notices

14.1 Notices given in relation to these Terms (including any consents or approvals) shall be in writing and given to its recipient by email to the relevant email address provided in the online form, or as otherwise advised by the recipient, receipt of which in each case will be regarded as received on the second Business Day after sending.

## 15. General

15.1 (Relationship between you and Chargefox) Neither you nor Chargefox must represent yourselves, and must ensure that your Representatives do not represent themselves, as employees or agents of the other.

- 15.2 (Remedies) Both you and Chargefox acknowledge that, in the event of any breach of these Terms by either of you or by any of your representatives, the other party may be entitled to equitable relief, including without limitation, an injunction, in addition to damages.
- 15.3 (Severability) if a provision of these Terms is wholly or partly invalid or unenforceable, the provision or part will be treated as deleted from these Terms without affecting the validity or enforceability of the remaining provisions. You and Chargefox shall in this event seek to agree within a reasonable time upon a valid and enforceable provision or part of a provision to replace the provision or part of a provision found to be void and unenforceable while maintaining the economic balance between you and Chargefox.
- 15.4 (Exercise and waiver of rights)
- (a) The rights or remedies available to you and Chargefox are cumulative and do not affect any other right or remedy of you and Chargefox under these Terms or Law.
  - (b) Any failure to exercise any right or remedy available to either you or Chargefox, or any partial exercise of any right or remedy does not limit your respective rights to exercise that or any other right or remedy.
  - (c) Any waiver to these Terms must be done in writing.
- 15.5 (Survival) Clauses 3, 8 – 12 and 15.1 – 15.5 of these Terms will continue to apply following termination of your subscription.
- 15.6 (Set off) Chargefox may set off any amounts payable by you to Chargefox against any amount payable to you by Chargefox.
- 15.7 (Transfer) Neither you nor Chargefox may assign, novate or transfer any of your rights or obligations under your subscription and these Terms without the prior written consent of the other party (which will not be unreasonably withheld).

## 16. Interpretation

### 16.1 In these Terms:

- (a) headings and bold type are for convenience only and are not intended to affect the interpretation of these Terms;
- (b) where context requires, words in the singular include the plural, and vice versa;
- (c) unless expressly stated otherwise, a reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment to these Terms;
- (d) any inclusive language is to be interpreted as without limitation;
- (e) any consent or approval that may be provided by a party may or may not be provided at that party's absolute discretion;
- (f) a reference to days mean calendar days;

- (g) a reference to a document includes all subsequent variations, supplements, replacements or novations of that document;
- (h) a reference to a person includes any individual or entity, including partnerships, joint ventures or associations, whether incorporated or unincorporated; and
- (i) a reference to any party includes that party's executors, administrators, substitutes, successors and permitted assigns.

## 17. Governing law

- 17.1 These Terms will be governed by and interpreted in accordance with the laws of Victoria, Australia.
- 17.2 You and Chargefox irrevocably submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, Australia in respect of any proceedings arising in connection with these Terms.

## 18. Contacting us

If you have questions about the Chargefox Network, the Chargefox Apps, the Website or these Terms, please contact us. Our contact details can be found on our Website.