

## SUPPLY OF SERVICES AGREEMENT

### BACKGROUND

In this Agreement:

1. each of the Subscriptions or Services shall be bound by the Payment Module Terms together with the Quote, the Terms and Conditions for the respective Services and the Schedules (our **Agreement**);

2. in the event of any conflict in respect of the provisions of this Agreement and/or the documents referred to in it the following order of priority shall prevail (in descending order of priority):

- a) In respect of the Payment Module only, the Payment Module Terms;
- b) Quote;
- c) Terms and Conditions; and
- d) Schedules appended to the Terms and Conditions (other than the Payment Module Terms in respect of the Payment Module).

3. subject to the order of priority between documents in clause 2 above, later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.

This Agreement has been entered into on the date upon which the Quote is signed.

## TERMS AND CONDITIONS

### It is agreed

#### 1 Definitions and Interpretation

1.1 The definitions and rules of interpretation set out in these Terms and Conditions shall have the meaning given to them in the Quote, or as follows:

**Authorised Users** means those employees, agents and independent contractors of the Client who are authorised by the Client to use the Services and the Documentation, as further described in clause 2.2(b).

**Beneficiary** means the beneficiary of the payment received through the Payment Module.

**Business Day** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Charge Point** means the electric vehicle charging stations from which charging services are provided to End Users of the Client and through which Fuuse provides the client with a charge point management service.

**Charge Point Data** means the data collected by Fuuse in relation to End Users use of the Charge Points.

**Charges** means the charges payable by the Client to Fuuse for the Subscriptions and any additional Services, as set out in the Quote.

**Client** means the company set out in the Quote for whom Fuuse are providing the Subscriptions and/or Services.

**Client Data** means the data inputted by the Client, Authorised Users, or Fuuse on the Client's behalf for the purpose of using the Services or facilitating the Client's use of the Services.

Consumer Price Index means the Consumer Price Index (all Items Index) figure published by the Office of National Statistics or any official index replacing it.

**Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of this Agreement in connection with this Agreement, including but not limited to:

- (a) any information that would be regarded as confidential by a reasonable business person relating to:
  - (i) the business, assets, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and

- (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs).
- (b) any information developed by the parties in the course of carrying out this Agreement and the parties agree that:
  - (i) details of the Services, and the results of any performance tests of the Services, shall constitute Fuuse Confidential Information; and
  - (ii) Client Data shall constitute Client Confidential Information.

**Connectors** means the physical interface of the Charge Point that connects to the electric vehicle via a cable through which the Charging Services are provided. A Charge Point may consist of one or more Connectors. Subscriptions are calculated based on the number of Connectors (not Charge Points).

**Controller, Data Breach, Joint Controller, Personal Data, Processing, and Processor** all respectively have the meaning given in the UK GDPR.

**Data Protection Laws** means any applicable law relating to the protection of Personal Data, as applicable to the parties, including the UK GDPR, the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (in each case as amended or superseded).

**Documentation** means the support information document made available to the Client by Fuuse and stored at <https://support.fuuse.io/knowledge/fuuse-portal> which sets out the user instructions for the Services.

**Effective Date** means the date upon which the Quote is signed.

**End Users** means the customers of the Client or other end users that connect to the Charge Points.

**Fuuse** means Fuuse Limited (company number is 10189845) whose registered office address is White Cross Business Park, South Road, Lancaster, England, LA1 4XQ.

**Force Majeure** means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under our Agreement (provided that an inability to pay is not Force Majeure), including any matters relating to transfer of data over public communications networks and any delays or problems associated with any such networks or with the internet.

**Initial Term** means 3 years unless otherwise specified in the Quote.

**Intellectual Property Rights** means any and all copyright, rights in inventions, patents, know-how, trade secrets, trademarks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, utility models, domain names and all similar rights and, in each case:

- a) whether registered or not;
- b) including any applications to protect or register such rights;
- c) including all renewals and extensions of such rights or applications;

- d) whether vested, contingent or future; and
- e) wherever existing

**Invoice Date** means monthly in advance unless otherwise specified in the Quote.

**Normal Business Hours** means 9.00 am to 5.00 pm local UK time, each Business Day.

**Payment Module** means the additional Service (“Fuuse Billing”) which can be added to the Software which enables Fuuse to charge and receive payments from Charge Points, the provision of which is subject to the Payment Module Terms.

**Payment Module Terms** means the additional terms and conditions which apply to the provision of the Payment Module, as set out in Schedule 3, to be entered into between Fuuse and the Beneficiary.

**Persistent Service Failure** means any Service Delivery Failure repeated across 3 consecutive months in respect of the same Service Level identified in Schedule 2.

**Quote** means the document provided by Fuuse to the Client which is bound by the terms of this Agreement and sets out details of the Client, the Charges and the Subscriptions and/ or Services.

**Renewal Period** means the period described in clause 17.1.

**Representatives** means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

**Reseller** means a non-exclusive reseller appointed by Fuuse to distribute the Fuuse charge point management platform and related services.

**Service Delivery Failure** means a failure by Fuuse to achieve the targets set out in: the Uptime Service Level; or the Support Service Levels set out in Schedule 2.

**Services** means all or any part(s) of any services of the type and specification listed in the Quote and any associated Documentation relating to each of them, together with any other services developed by Fuuse, including the Integration Services, the Payment Module (where applicable) and additional services outlined in Schedule 2 (SLA), and which Fuuse permits the Client to use for their own internal business purposes pursuant to this Agreement.

**Software** means the charge point management online software applications provided by Fuuse to the Client as part of the Services.

**Subscriptions** means the subscriptions purchased by the Client pursuant to clause 12.1 which entitle Authorised Users to access and use the Services in accordance with these Terms and Conditions.

**SLA** means Fuuse’s standard service level agreement as set forth in Schedule 2.

**Term** has the meaning given in clause 17.1 (being the Initial Term together with any subsequent Renewal Periods).

**UK GDPR** has the meaning given to it in the Data Protection Act 2018.

**VAT** means United Kingdom value added tax, any other tax imposed in substitution for it [and any equivalent or similar tax imposed outside the United Kingdom].

**Virus** means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**Vulnerability** means a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be interpreted accordingly.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation hereof.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.9 A reference to **writing** or **written** excludes fax but not email.
- 1.10 References to clauses and schedules are to the clauses and schedules of these Terms and Conditions; references to paragraphs are to paragraphs of the relevant schedule to these Terms and Conditions.

## **2 Subscriptions**

- 2.1 Subject to the Client purchasing the Subscriptions in accordance with clause 3 and clause 12, the restrictions set out in this clause 2 and the rest of these Terms and Conditions, Fuuse hereby grants to the Client a non-exclusive, non-transferable right and licence, without the right to grant sub-licences, to permit the Authorised Users to use the Services and the Documentation during the Term solely for the purpose the Client's internal business purposes.

- 2.2 In relation to the Authorised Users, the Client undertakes that:
- (a) each Authorised User shall keep a secure password for their use of the Services and Documentation, that such password shall be changed no less frequently than 90 days and that each Authorised User shall keep their password confidential; and
  - (b) it shall maintain a written, up to date list of current Authorised Users and provide such list to Fuuse within 5 Business Days of Fuuse's written request at any time or times.
- 2.3 The Client shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that: is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or is otherwise illegal or causes damage or injury to any person or property; and Fuuse reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to any material that breaches the provisions of this clause.
- 2.4 The Client shall not:
- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Terms and Conditions:
    - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
    - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
  - (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
  - (c) use the Services and/or Documentation to provide services to third parties (other than to their customers in the event that the Client is a Reseller); or
  - (d) subject to clause 28.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
  - (e) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 2; or
  - (f) introduce or permit the introduction of any Virus or Vulnerability into Fuuse's network and information systems.

2.5 The Client shall use their best endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify Fuuse.

2.6 The rights provided under this clause 2 are granted to the Client only, and shall not be considered granted to any subsidiary or holding company of the Client.

### **3 Additional Subscriptions and Services**

3.1 Subject to clause 3.2 and clause 3.3, the Client may, during any Term, purchase, based on the rates set out in Schedule 1, additional Subscriptions in excess of the number set out in the Quote and Fuuse shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement.

3.2 If the Client wishes to purchase additional Subscriptions or Services, the Client shall notify Fuuse in writing. Fuuse shall evaluate such request for additional Subscriptions or Services and respond to the Client with approval or rejection of the request (such approval not to be unreasonably withheld). Where Fuuse approves the request, Fuuse shall activate the additional Subscriptions within 30 days of its approval of the Client's request, subject to the commissioning date of the Connector(s).

3.3 If Fuuse approves the Client's request to purchase additional Subscriptions, the Client shall, within 30 days of the date of Fuuse's invoice, pay to Fuuse the relevant fees for such additional Subscriptions and, if such additional Subscriptions are purchased by the Client part way through the Initial Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by Fuuse for the remainder of the Initial Term or then current Renewal Period (as applicable).

### **4 Services**

4.1 Fuuse shall, during the Term, provide the Services and make available the Documentation to the Client on and subject to these Terms and Conditions.

4.2 Fuuse shall use commercially reasonable endeavours to make the Services available in accordance with the SLA, however the Services may be unavailable during any Scheduled Maintenance (as defined in the SLA).

4.3 The undertaking at clause 4.2 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Fuuse's instructions, or modification or alteration of the Services by any party other than Fuuse or Fuuse's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Fuuse will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's sole and exclusive remedy for any breach of the undertaking set out in clause 4.2.

4.4 Fuuse will, as part of the Services and at no additional cost to the Client, provide the Client with Fuuse's standard Client support services during Normal Business Hours in accordance with the SLA in effect at the time that the Services are provided. Fuuse may amend the scope of such Services in its discretion from time to time.

## 5 Data Protection

- 5.1 The parties acknowledge that under Data Protection Laws it is the factual arrangement between them which shall dictate their role and status. Notwithstanding the foregoing, the parties anticipate that, for the purposes of Data Protection Laws, each party acts as an independent Controller of any Personal Data shared in connection with this Agreement.
- 5.2 The parties do not anticipate that either party will act as a Joint Controller or that the relationship will be of Controller and Processor, however, to the extent that Processing arises then the parties shall in good faith enter into a separate Joint Controller or data Processing agreement to comply with the applicable provisions in the UK GDPR.
- 5.3 Each party will comply with Data Protection Laws at all times and will not by any act or omission put the other party in breach of its obligations under Data Protection Laws.
- 5.4 Each party will advise the other party without undue delay, and in any event within 48 hours should it suffer a suspected or actual Data Breach or receive any notice or allegation from the Information Commissioner's Office or an End User of its non-compliance with Data Protection Laws.

## 6 Third party partners

The Client acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Fuuse makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Client, with any such third party. Any contract entered into, and any transaction completed via any third-party website is between the Client and the relevant third party, and not Fuuse. Fuuse recommends that the Client refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Fuuse does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## 7 Installation and Integration

- 7.1 The Client shall be responsible for selecting and installing the Charge Points. After the Charge Points have been installed, and subject to clause 12.1, Fuuse shall provide any reasonably necessary support for the integration of the Charge Points with the Software through our standard onboarding process where required (**Integration Services**).
- 7.2 The Client shall be responsible for providing all necessary support to their customers for the integration of the OCPP 1.6 Charge Points with the Software including but not limited to the set up, configuration and testing of Charge Points.



- 7.3 The Client shall ensure that it has procured a smart enabled OCPP 1.6 Charge Point from the provider. All Charge Points shall be connected to a 3G, 4G or 5G mobile network, or if a phone signal is not available then over the internet via Wi-Fi. The Client acknowledges that all Charge Points must actively communicate with Fuuse's servers to enable them to be remotely maintained. Fuuse shall not be held liable should the installation fail to ensure internet-based communication with the Software.
- 7.4 In order to receive the Integration Services, the Client agrees to promptly provide Fuuse with:
- (a) Site details;
  - (b) MPAN and site load capacity details (if load balancing required);
  - (c) Charger name;
  - (d) OCPP ID;
  - (e) Meter delivery value;
  - (f) Connector identifier;
  - (g) Maximum power; and
  - (h) Connector details.
- 7.5 Where Client chooses a public Charge Point, the following additional terms apply:
- (a) Client agrees that its Charge Points will appear on the Fuuse App (or white-labelled equivalent), the WattStop App, in car systems, maps and on a variety of third party data sources which Fuuse provide.
  - (b) Client grants Fuuse permission to share information, including locations, descriptions, current status, pricing and access times of its Charge Points with third parties from time to time.
  - (c) Client grants Fuuse permission to include the existence of its Charge Points in advertising and marketing materials as is sees fit from time to time.
  - (d) Client grants Fuuse a non-exclusive, royalty-free, worldwide licence to use the Client's brand name and logos for the purposes listed in clauses 7.4(a) to (c) above.
  - (e) Where the Client chooses to purchase a Fuuse Public subscription, the Client agrees to set the roaming tariff of its public Charge Points at a rate equivalent to its standard public tariff.
- 7.6 Where Client chooses a private Charge Point, the following additional terms apply:
- (a) Client may limit access to the Charge Point to Authorised Users, who will be able to see the Charge Point on the Fuuse App (or white-labelled equivalent), but Fuuse will not advertise the Charge Point beyond the inclusion on the Fuuse App (or white-labelled equivalent) for Authorised Users.
- 7.7 In the event that the applicable Charge Point manufacturer and / or installer appointed by the Client operates Charge Points via an OCPP middleware solution:

- (a) Fuuse shall connect to the middleware solution to operate the Charge Points;
- (b) the Client shall be responsible for ensuring that it has all necessary licences and consents from any applicable third parties to enable Fuuse to connect to the middleware solution; and
- (c) where reasonably practicable, Fuuse shall notify the Client of any failure or downtime of the middleware solution after it becomes aware, however Fuuse takes no responsibility for any such failure or downtime and shall not be liable for any losses the Client may suffer as a result of any such failure or downtime.

7.8 If the Client requires Fuuse Representatives to attend its premises to oversee the initial installation of the Charge Points by the Charge Point provider, the Client will be charged on an hourly basis in accordance with the rates set out in the Quote.

## **8 Charge Point Data and Derived Data**

8.1 Client acknowledges and agrees that all Charge Point Data shall be owned by Fuuse.

8.2 Fuuse shall not be liable for:

- (a) any loss or damage suffered by the Client in the event that the Charge Point Data is inaccurate; and
- (b) (to the fullest extent permitted by law) any loss of, or damage to, the Charge Point Data.

8.3 Fuuse hereby grants Client, for the duration of the Term, a non-exclusive, non-transferable, revocable, licence to use the Charge Point Data to:

- (a) access, view and manipulate the Charge Point Data and create derived data from it (**Derived Data**);
- (b) store and manipulate the Derived Data; and
- (c) distribute the Derived Data using the Software,

solely for Client's own internal business purposes.

8.4 Any display of such Derived Data by the Client shall credit, wherever technically and commercially feasible, Fuuse, any licensor of Fuuse or any other source of the Derived Data specified by Fuuse as the source of the Derived Data.

## **9 Payment Module**

9.1 Where the Client procures the Payment Module as Beneficiary or on behalf of the Beneficiary, it is agreed that the Payment Module shall be provided on the basis of the Payment Module Terms set out in Schedule 3.

9.2 The Client shall either enter into the Payment Module Terms as Beneficiary, or procure that the Beneficiary enters into, the Payment Module Terms directly with Fuuse.

9.3 The Client acknowledges and agrees that the Payment Module cannot be provided by Fuuse unless and until the Beneficiary details have been entered into the Fuuse platform.

## **10 Fuuse's obligations**

### 10.1 Fuuse:

- (a) does not represent or warrant that:
  - (i) the Client's use of the Services will be uninterrupted or error-free;
  - (ii) that the Services, Documentation and/or the information obtained by the Client through the Services will meet the Client's requirements; or
  - (iii) the Software or the Services will be free from Vulnerabilities or Viruses.
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- (c) is constantly improving the Software, and it reserves the right to add, modify and remove functionality as it sees fit.

10.2 Nothing in this Agreement shall prevent Fuuse from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

10.3 Fuuse warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

## **11 Client's obligations**

### 11.1 The Client shall:

- (a) provide Fuuse with:
  - (i) all necessary co-operation in relation to this Agreement; and
  - (ii) all necessary access to such information as may be required by Fuuse;

in order to provide the Services, including but not limited to Client Data, security access information and Integration Services;
- (b) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;
- (c) carry out all other Client responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, Fuuse may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Fuuse, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
  - (f) comply with all relevant health and safety provisions, as set out in section 8 of the Electric Vehicles (Smart Charge Points) Regulations 2021 and other such safety legislation or regulation that charge points are subject to and ensure that its network and systems comply with the relevant specifications provided by Fuuse from time to time; and
  - (g) be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Fuuse's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet.
- 11.2 Except as otherwise expressly agreed in this Agreement, Fuuse shall not be obliged to provide the Client with any assistance extracting, transferring or recovering any data whether during or after the Term. The Client acknowledges and agrees that it is responsible for maintaining safe backups and copies of any Client Data, including as necessary to ensure the continuation of the Customer's and Authorised Affiliates' businesses. The Client shall, without limitation, ensure that it backs up (or procures the back up of) all Client Data regularly (in accordance with its, its Authorised Affiliates and its Authorised User's needs) and extracts it from each Subscribed Service prior to the termination or expiry of this Agreement or the cessation or suspension of any of the Services.
- 11.3 Without prejudice to its other rights and remedies under this Agreement, Fuuse reserves the right to disable the Client's access to the Software where Client is in breach of any provision of this Agreement.
- 11.4 The Client shall own all right, title and interest in and to all of the Client Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Client Data.

## **12 Charges and payment**

- 12.1 The Client shall pay the Charges to Fuuse for the Subscriptions in accordance with clause 12.2 and Schedule 1.
- 12.2 The Client shall on the Effective Date provide to Fuuse valid, up-to-date and complete credit card details or approved purchase order information acceptable to Fuuse and any other relevant valid, up-to-date and complete contact and billing details and, if the Client provides:
- (a) its credit card details to Fuuse, the Client hereby authorises Fuuse to bill such credit card:
    - (i) on the Invoice Date for the Charges payable in respect of the Initial Term; and

- (ii) subject to clause 17.1, on each anniversary of the Invoice Date for the Charges payable in respect of the next Renewal Period;
  - (b) its approved purchase order information to Fuuse, Fuuse shall invoice the Client:
    - (i) on the Invoice Date for the Charges payable in respect of the Initial Term; and
    - (ii) subject to clause 17.1, at least 30 days prior to each anniversary of the Invoice Date for the Charges payable in respect of the next Renewal Period,and the Client shall pay each invoice within 30 days after the date of such invoice.
- 12.3 If Fuuse has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Fuuse:
- (a) Fuuse may, without liability to the Client, disable the Client's password, account and access to all or part of the Services and Fuuse shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 12.4 All amounts and fees stated or referred to in this Agreement:
- (a) shall be payable in pounds sterling;
  - (b) are, subject to clause 17.2, non-cancellable and non-refundable;
  - (c) are exclusive of value added tax, which shall be added to Fuuse's invoice(s) at the appropriate rate.
- 12.5 Fuuse reserves the right to increase the Charges set out in Schedule 1 on 1 January every year upon providing no less than 30 days' prior notice to the Client by
- (a) 7%; or
  - (b) in line with the Consumer Price Index,
- (whichever is higher) and the Charges shall be deemed to have been amended accordingly. For the avoidance of doubt, any increase will only apply to the next Invoice due and shall never be applied retrospectively or to Charges paid upfront.

### **13 Intellectual Property Rights**

- 13.1 The Client acknowledges and agrees that Fuuse and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Client any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks

(whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

- 13.2 Fuuse confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.
- 13.3 Subject to clause 14.8, the Client grants to Fuuse a non-exclusive, royalty-free, revocable licence during the Term to use its logos and trademarks for the purposes set out in that clause.

## 14 Confidentiality

- 14.1 The provisions of this clause shall not apply to any Confidential Information that:
- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
  - (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
  - (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
  - (d) the parties agree in writing is not confidential or may be disclosed; or
  - (e) is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 14.2 Each party shall keep the other party's Confidential Information secret and confidential and shall not:
- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement (**Permitted Purpose**); or
  - (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 14.
- 14.3 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
  - (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.
- 14.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as

much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 14.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

- 14.5 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.
- 14.6 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party, or to be implied from this Agreement.
- 14.7 On termination or expiry of this Agreement, each party shall:
- (a) destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
  - (b) erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and
  - (c) certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party, subject to clause 17.
- 14.8 Subject to the Client's prior approval (such approval not to be unreasonably withheld), Fuuse shall be entitled to:
- (a) issue a press release, outlining that the Client has engaged Fuuse, immediately following the Integration of the Software with the Charge Point; and
  - (b) refer to the Client's engagement of Fuuse in any credentials, advertising or marketing materials and create case studies in respect of the Services for the purposes of promoting the Services.
- 14.9 Except as expressly set out in clause 14.8, no party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 14.10 Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

14.11 The above provisions of this clause 14 shall continue to apply after termination or expiry of this Agreement.

## **15 Indemnity**

15.1 The Client shall defend, indemnify and hold harmless Fuuse against claims, actions, proceedings, costs, damages, expenses, losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation) and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses arising out of or in connection with the Client's use of the Services and/or Documentation, provided that:

- (a) the Client is given prompt notice of any such claim;
- (b) Fuuse provides reasonable co-operation to the Client in the defence and settlement of such claim, at the Client's expense; and
- (c) the Client is given sole authority to defend or settle the claim.

15.2 Fuuse shall defend the Client, its officers, directors and employees against any claim that the Client's use of the Services in accordance with this Agreement infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Client for any amounts awarded against the Client in judgment or settlement of such claims, provided that:

- (a) Fuuse is given prompt notice of any such claim;
- (b) the Client does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to Fuuse in the defence and settlement of such claim, at Fuuse's expense; and
- (c) Fuuse is given sole authority to defend or settle the claim.

15.3 In the defence or settlement of any claim, Fuuse may procure the right for the Client to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Client without any additional liability or obligation to pay liquidated damages or other additional costs to the Client.

15.4 In no event shall Fuuse, its employees, agents and sub-contractors be liable to the Client to the extent that the alleged infringement is based on:

- (a) a modification of the Services or Documentation by anyone other than Fuuse; or
- (b) the Client's use of the Services or Documentation in a manner contrary to the instructions given to the Client by Fuuse; or
- (c) the Client's use of the Services or Documentation after notice of the alleged or actual infringement from Fuuse or any appropriate authority.

15.5 The foregoing and clause 16.3(b) states the Client's sole and exclusive rights and remedies, and Fuuse's (including Fuuse's employees, agents and sub-contractors')



entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## **16 Limitation of liability**

16.1 Except as expressly and specifically provided in this Agreement:

- (a) the Client assumes sole responsibility for results obtained from the use of the Services, Derived Data and the Documentation by the Client, and for conclusions drawn from such use. Fuuse shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Fuuse by the Client in connection with the Services, or any actions taken by Fuuse at the Client's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
- (c) the Services and the Documentation are provided to the Client on an "as is" basis.

16.2 Nothing in this Agreement excludes the liability of Fuuse:

- (a) for death or personal injury caused by Fuuse's negligence; or
- (b) for fraud or fraudulent misrepresentation.

16.3 Subject to clause 16.1 and clause 16.2:

- (a) Fuuse shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
- (b) Fuuse's total aggregate liability in contract (including in respect of the indemnity at clause 15.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Charges paid for the Subscriptions during the 12 months immediately preceding the date on which the claim arose.

16.4 Nothing in this Agreement excludes the liability of the Client for any breach, infringement or misappropriation of Fuuse's Intellectual Property Rights.

## **17 Term and termination**

17.1 This Agreement shall, unless otherwise terminated as provided in this clause 17, commence on the Effective Date and continue for the Initial Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 24 months (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Term or any Renewal Period, in which case this

Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or

(b) otherwise terminated in accordance with the provisions of this Agreement;

and the Initial Term together with any subsequent Renewal Periods shall constitute the **Term**.

17.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

(a) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

(b) the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

(c) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(d) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

(e) the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under this Agreement has been placed in jeopardy.

17.3 Client may terminate this Agreement with immediate effect by giving written notice to Fuuse if Fuuse commits a Persistent Service Failure.

17.4 On termination of this Agreement for any reason:

(a) all licences granted under this Agreement shall immediately terminate and the Client shall immediately cease all use of the Services and/or the Documentation;

(b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

(c) Fuuse may destroy or otherwise dispose of any of the Client Data in its possession unless Fuuse receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery

to the Client of the then most recent back-up of the Client Data. Fuuse shall use reasonable commercial endeavours to deliver the back-up to the Client within 30 days of its receipt of such a written request, provided that the Client has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Client shall pay all costs and expenses incurred by Fuuse in returning or disposing of Client Data; and

- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

## **18 Suspension**

18.1 Fuuse may suspend access to the Services (or any part) to all or some of the Authorised Users if:

- (a) Fuuse suspects that there has been any misuse of the Services or breach of our Agreement;
- (b) the Client fails to pay any sums due to the Supplier by the due date for payment; or
- (c) required by law, by court or governmental or regulatory order.

18.2 Where the reason for the suspension is suspected misuse of the Services or breach of this Agreement, without prejudice to its rights under this Agreement, Fuuse will take steps to investigate the issue and may restore or continue to suspend access at its discretion.

18.3 In relation to suspensions under clause 18.1(b), access to the Services will be restored promptly after Fuuse receives payment in full and cleared funds.

18.4 Fees shall remain payable during any period of suspension notwithstanding that the Client, affiliates (authorised by Fuuse) or some or all of the Authorised Users may not have access to the Services.

## **19 Business Ethics and Anti-Bribery**

19.1 The Parties shall, when acting in connection with this Agreement (prior to or after the entering into of this Agreement), always act in compliance with all applicable state, national, and international laws, rules and regulations relating to ethical and responsible standards of behaviour, including but not limited to those dealing with human rights, environmental protection, corruption, fraud, anti-money laundering, applicable sanction regimes, and other economic crimes. The Parties shall:

- (a) comply with (and not engage in any activity, practice or conduct which breaches) any and all applicable anti-corruption laws and regulations (including the Bribery Act 2010); and

- (b) have, maintain and comply with reasonable policies and procedures designed to avoid corrupt practices, including adequate procedures under the Bribery Act 2010.

19.2 Each party shall promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of the Contract.

## **20 Force majeure**

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 12 weeks, the party not affected may terminate this Agreement by giving 14 days' written notice to the affected party.

## **21 Anti-slavery and human trafficking**

21.1 In performing its obligations under the agreement, Fuuse shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force (Anti-Slavery Laws) including but not limited to the Modern Slavery Act 2015; and

- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in England and Wales;

21.2 Fuuse represents and warrants that it has not been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

## **22 Conflict**

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

## **23 Variation**

No variation of this Agreement shall be valid or effective unless it is:

- (a) made in accordance with this Agreement; and

- (b) made in writing and is duly signed or executed by, or on behalf of, each party or their authorised representatives.

## **24 Waiver**

21.2 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

24.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

## **25 Rights and remedies**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **26 Severance**

26.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the legality, validity and enforceability of the rest of this Agreement.

26.2 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **27 Entire agreement**

27.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

27.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

## **28 Assignment**

28.1 Except as expressly permitted by this Agreement, the Client shall not assign, transfer, sub-contract, sub-licence, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under our Agreement (including the licence rights granted), in whole or in part, without Fuuse's prior written consent.

28.2 Except as expressly provided in this Agreement, Fuuse may at any time assign, sub-contract, sub-licence (including by multi-tier), transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under this Agreement.

## **29 No partnership or agency**

Save to the limited extent set out expressly in the Payment Module Terms, nothing in this Agreement is intended to or shall operate to create a partnership between the

parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

### **30 Third party rights**

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

### **31 Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. A signed copy of this Agreement transmitted via facsimile, email or other electronic means shall constitute an originally signed Agreement, as applicable and when together with all other required signed copies of this same Agreement, as applicable, shall constitute one and the same instrument.

### **32 Notices**

32.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address intimated by that party (or an address substituted in writing by the party to be served).

32.2 Any notice shall be deemed to have been received:

- (i) if delivered by hand, at the time the notice is left at the proper address;
- (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

32.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### **33 Costs and expenses**

Each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of our Agreement (and any documents referred to in it).

### **34 Governing law**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.

### **35 Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## **Schedule 1 Charges**

See pricing set out in the Quote.

Fuuse reserves the right to increase RFID card and/ or SIM card prices annually by up to 25%.

### **Bespoke Work / Call Out Charges**

Any additional work requested by the Client will be pre-agreed in writing and subject to a purchase order before commencement. Costs will be based on standard daily rates for specific employees.



## Schedule 2

### Service Level Agreement (SLA)

#### 1. Maintenance Events

1.1 Fuuse shall be entitled to perform maintenance on the Software for a period of time, provided that, where such maintenance leads to a disruption in service, Fuuse provides the Client with at least 5 days' prior written notice of such maintenance (**Scheduled Maintenance**).

1.2 Fuuse will use reasonable endeavours to ensure that any Scheduled Maintenance of the Software or other aspects of the Services that leads to a disruption in service shall not be performed during Normal Business Hours. However, Fuuse may interrupt the Services to perform:

- (a) emergency maintenance during the daily window of 10.00 pm to 2.00 am UK time; and
- (b) unscheduled maintenance outside Normal Business Hours provided that it has given the Client at least 24 hours advance notice,

(together, referred to as **Maintenance Events**).

1.3 Any disruption to service caused by Maintenance Events that occur during Normal Business Hours, and which were not Scheduled Maintenance, nor requested or caused by the Client, shall be considered 'downtime' for the purpose of service availability measurement.

#### 2. System Availability Service Level

The Software will be available 24 hours a day, 7 days each week (and shall include all bank holidays). Fuuse commits to at least a 99% uptime availability of the Software each calendar month (**Uptime Service Level**). Uptime Service Level does not include Client or End User caused outages, Maintenance Events, disruptions or outages due to Force Majeure events within the meaning of clause 21. Fuuse cannot be held responsible for any downtime of the Software that is caused by changes, damage or other actions made to the charging hardware by the Client, the End User or third parties that make the charging units inoperable.

#### 3. Support Service Level

The Client shall promptly report any issues with the Software to Fuuse, as well as any issues with the Charge Points that may impact the deployment of the Software. Issues should be

reported by the Client to: [support@fuuse.io](mailto:support@fuuse.io); via the Fuuse live chat service or by phone to 01524 68818.

Fuuse will respond to support queries as follows:

	<b>Target time to respond</b>	<b>Target time to propose action for resolution</b>
<b>Support queries sent during Normal Business Hours</b>	<i>2 hours</i>	<i>Within 12 hours from the Target response time</i>
<b>Support queries sent outside Normal Business Hours</b>	<i>6 hours</i>	<i>Within 12 hours after the start of next Business Day</i>

(the **Support Service Levels**)

#### **4. Integration and Training**

Fuuse will, where applicable, make available to the Client marketing materials, promotional content and provide Integration Services.

Fuuse will, where applicable, provide designated personnel to the Client in order to provide the Client with training for its effective use of Fuuse.

Additional training can be provided to the Client subject to additional costs.

## Schedule 3

### Payment Module Terms

#### 1 Definitions and Interpretation

1.1 The following definitions and rules of interpretation apply in these Payment Module Terms.

**Beneficiary** means the legal entity who is the beneficiary of the Payments

**Charge Points** means the electric vehicle charge points on which the Software is installed and from which the Charging Services are provided

**Charging Services** means the provision of electric vehicle charging for the End User's electric vehicle via the Charge Points which are controlled by the Software

**Charging Services Terms** means the terms and conditions to be put in place between the Beneficiary and the End User for the provision of the Charging Services in consideration of the Payment, a template for which is available in the Software

**Controller, Personal Data Breach, Joint Controller, Personal Data, Processing, and Processor** all respectively have the meaning given in the UK GDPR

**Commencement Date** means the date on which the Payment Module is activated by or on behalf of the Beneficiary

**Data Protection Laws** means any applicable law relating to the protection of Personal Data, as applicable to the parties, including the UK GDPR, the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (in each case as amended or superseded)

**End User** means the individuals who use the Charge Points to charge their electric vehicles

**Payment** means the payment to be paid by the End User for the provision of the Charging Services, to be collected via the Payment Module and calculated in accordance with the Tariff

**Payment Module** means the software module which has been added to the Software which enables Fuse to charge and receive Payments from End Users

**Payment Module Terms** means these terms and conditions

**Reseller** means the third-party reseller from whom the Beneficiary (or the Site Owner acting on behalf of the Beneficiary) may have purchased the Software

**Site Owner** means the owner of the Charge Points (who may or may not be the same legal entity as the Beneficiary)

**Software** means the charge point management online software applications provided by Fuuse, including the Payment Module

**Services Agreement** means the agreement for the provision of the Software and associated Services between either: (i) Fuuse and the Beneficiary; (ii) Fuuse and the Reseller; or (iii) Fuuse and the Site Owner

**Tariff** means the tariff to be applied to the provision of the Charging Services, as set by the Beneficiary in the Software

**UK GDPR** has the meaning given to it in the Data Protection Act 2018

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation hereof.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of these Payment Module Terms.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of these Payment Module Terms under that statute or statutory provision.
- 1.9 A reference to writing or written excludes fax but not email.
- 1.10 References to clauses are to the clauses of these Payment Module Terms.

1.11 In the event of any conflict between these Payment Module Terms and the Services Agreement, these Payment Module Terms shall prevail except to the extent expressly stated otherwise.

## **2 Appointment**

2.1 The Beneficiary appoints Fuuse as its non-exclusive agent and hereby authorises Fuuse to:

- (a) conclude contracts for the provision of the Charging Services in the name of and on behalf of the Beneficiary, without prior reference to the Beneficiary, but only on the Charging Services Terms;
- (b) issue invoices on behalf of the Beneficiary relating to the supply of the Charging Services; and
- (c) collect Payments by card from End-Users for the supply of the Charging Services on behalf of the Beneficiary, or using whatever other payment method Fuuse may determine from time to time is appropriate.

2.2 Fuuse does not personally guarantee to the Beneficiary any Payments due by the End Users for the provision of the Charging Services.

2.3 Nothing in these Payment Module Terms shall:

- (a) restrict Fuuse in terms of its dealings with any third parties, and in particular (without limitation) Fuuse shall be free to engage with and enter into arrangements and contractual terms with third parties for the provision of the Payment Module and the Software; or
- (b) restrict Fuuse from retaining any profit, commission or benefit as a result of the services performed by Fuuse under these Payment Module Terms.

2.4 The Beneficiary agrees that, to the extent permitted by law, Fuuse shall not be required to comply with any fiduciary obligation imposed on it by virtue of it acting as non-exclusive agent for the Beneficiary.

## **3 Fuuse Obligations**

3.1 Fuuse undertakes and agrees at all times for the duration of these Payment Module Terms that it shall:

- (a) exercise due skill, care and diligence in the performance of its obligations under these Payment Module Terms;
- (b) describe itself in all dealings with End Users in connection with the provision of the Charging Services and as "agent" of the Beneficiary for the limited purpose of binding the Beneficiary to the Charging Services Terms with the End-User and taking the End-Users' payment;
- (c) employ a sufficient number of suitably qualified personnel to ensure the proper fulfilment of its obligations under these Payment Module Terms;
- (d) inform the Beneficiary promptly of any complaint or after-sales enquiry concerning the Charging Services received by Fuuse;
- (e) issue receipts to End Users for the provision of the Charging Services, calculated in accordance with the Tariff and shall collect Payments for the same. The receipts shall be in a form suitable for value added tax and other sales tax purposes; and
- (f) Fuuse shall not without prior reference to the Beneficiary (and then only acting strictly on the Beneficiary's express instructions) take part in any dispute or commence or defend any court or other dispute proceedings on behalf of the Beneficiary or settle or attempt to settle or make any admission concerning any such proceedings.

#### **4 Sale of the Charging Services**

- 4.1 All contracts for the supply of the Charging Services by Fuuse on behalf of the Beneficiary shall be at the Tariff as specified and provided by or on behalf of the Beneficiary (whether via the Software or otherwise) from time to time to Fuuse for this purpose, subject to any discounts or deductions as the Beneficiary may allow.
- 4.2 All contracts for the supply of the Charging Services by Fuuse on behalf of the Beneficiary shall be on the Charging Services Terms as set out in the Software, or any other terms and conditions that the Beneficiary may at any time specify in writing to Fuuse.
- 4.3 Fuuse shall, in the course of dealing with End Users, bring to their notice the Charging Services Terms, so as to incorporate them into each sale contract.

4.4 Fuuse shall not, without the Beneficiary's prior written consent, make or give any representations, warranties or other promises concerning the Charging Services beyond those contained in the Charging Services Terms.

## **5 Beneficiary Obligations**

5.1 The Beneficiary undertakes and agrees at all times for the duration of these Payment Module Terms:

- (a) the Beneficiary shall act in good faith at all times in its relations with Fuuse;
- (b) provided that Fuuse performs its obligations in accordance with these Payment Module Terms, the Beneficiary shall indemnify Fuuse against any liabilities which Fuuse may incur provided Fuuse was acting with reasonable care and skill within the scope of its authority under these Payment Module Terms as agent for the Beneficiary;
- (c) the Beneficiary shall supply Fuuse at its expense any documentation and information (in any format) and any technical, market and other support that Fuuse may from time to time reasonably require for the purpose of enabling Fuuse to properly and efficiently discharge its duties under these Payment Module Terms;
- (d) the Beneficiary shall ensure the performance of any contracts for the supply of the Charging Services made on its behalf by Fuuse under these Payment Module Terms, subject to its rights under those contracts;
- (e) the Beneficiary shall deal promptly and efficiently with any complaint, dispute or post-supply enquiry relating to the Charging Services raised by an End User; and
- (f) the Beneficiary shall inform Fuuse immediately in the event it is unable to perform its obligations under the Charging Services Terms or if it is unable to provide the Charging Services (including, without limitation, in the event of any issue with any Charge Point).

## **6 Fees, Charges and Payments**

6.1 The Beneficiary shall pay Fuuse commission at the rate [X] % of each Payment collected via the Software as specified in the Quote("Fees").

- 6.2 Fuuse shall invoice the Beneficiary monthly in arrears for all Fees payable by the Beneficiary to Fuuse under clause 6.1.
- 6.3 All sums payable under these Payment Module Terms are exclusive of any VAT or other applicable sales tax, which shall be added to the sum in question. A VAT invoice shall be provided against any payment.
- 6.4 All sums payable under these Payment Module Terms shall be payable in pounds sterling.
- 6.5 If any dispute arises as to the amount of fees payable by the Beneficiary to Fuuse, the same shall be referred to Fuuse's auditors for settlement and their certificate shall be final and binding on both parties.
- 6.6 For the purposes of establishing the amount of fees due to Fuuse, Fuuse shall send with each monthly invoice, a statement showing the aggregate amount received in Payments by it on behalf of the Beneficiary during the preceding month.
- 6.7 Fuuse shall:
- (a) For the purposes of transferring Payments received by Fuuse acting on behalf of the Beneficiary to the Beneficiary, Fuuse shall, with each invoice and accompanying statement under clause 6.6, transfer to the Beneficiary in pounds sterling the aggregate amount received in Payment by it on behalf of the Beneficiary during the preceding month, less the fees payable to Fuuse and any deductions required by law but without any other deductions. Fuuse shall also provide the Beneficiary with a statement or letter confirming that it has received payment of the Fees or mark the invoice as paid.; or
  - (b) For the purposes of transferring Payments from any third-party roaming partners received by Fuuse acting on behalf of the Beneficiary to the Beneficiary, Fuuse shall, with each invoice and accompanying statement under clause 6.6, transfer to the Beneficiary in pounds sterling the aggregate amount received in Payment by it on behalf of the Beneficiary during the preceding month, less the Fees payable to Fuuse and any deductions required by law but without any other deductions. Such transfer to the Beneficiary will be made in the month following receipt of funds from the third party. Fuuse shall also provide the Beneficiary with a statement or letter confirming that it has received payment of the Fees or mark the invoice as paid.



- 6.8 Fuuse shall:
- (a) collect all monies due to the Beneficiary from Payments collected via the Payments Module; and
  - (b) pay the remainder of the Payments to the Beneficiary following deduction on a monthly basis pursuant to clause 6.7.
- 6.9 Nothing in these Payment Module Terms shall require Fuuse to account to the Beneficiary for any interest accrued on Fuuse's credit balances from time to time in that account. The Beneficiary agrees that any such interest shall belong solely to Fuuse.
- 6.10 Each party shall keep separate accounts and records giving correct and adequate details of all enquiries received and transactions conducted by Fuuse on the Beneficiary's behalf and separate files of vouchers, invoices and receipts relevant to these Payment Module Terms, and shall permit the duly appointed representatives of the other party at all reasonable times to inspect all those accounts and records and to take copies of them.
- 6.11 If either party fails to make any payment due to the other under these Payment Module Terms by the due date for payment, then the defaulting party shall pay interest on the overdue amount at an annual rate equal to 4% over the then current base lending rate of the Bank of England from time to time. The interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement. The defaulting party shall pay the interest together with the overdue amount.

## **7 Compliance with laws**

- 7.1 Each party shall at its own expense comply with all laws and regulations relating to its activities under these Payment Module Terms, as they may change from time to time, and with any conditions binding on it in any applicable licences, registrations, permits and approvals.

## **8 Data Protection**

- 8.1 The parties acknowledge that under Data Protection Laws it is the factual arrangement between them which shall dictate their role and status. Notwithstanding the foregoing, the parties anticipate that, for the purposes of Data

Protection Laws, each party acts as an independent Controller of any Personal Data shared in connection with these Payment Module Terms.

- 8.2 The parties do not anticipate that either party will act as a Joint Controller or that the relationship will be of Controller and Processor, however, to the extent that Processing arises then the parties shall in good faith enter into a separate Joint Controller or data Processing agreement to comply with the applicable provisions in the UK GDPR.
- 8.3 Each party will comply with Data Protection Laws at all times and will not by any act or omission put the other party in breach of its obligations under Data Protection Laws.
- 8.4 Each party will advise the other party without undue delay, and in any event within 48 hours should it suffer a suspected or actual Data Breach or receive any notice or allegation from the Information Commissioner's Office or an End User of its non-compliance with Data Protection Laws.

## **9 Intellectual Property Rights**

- 9.1 The Beneficiary acknowledges and agrees that Fuuse and/or its licensors own all intellectual property rights in the Software (including the Payment Module) and associated documentation. Except as expressly stated herein, these Payment Module Terms do not grant the Beneficiary any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Software or any associated Documentation.
- 9.2 Fuuse confirms that it has all the rights in relation to the Software and associated documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of these Payment Module Terms.
- 9.3 Each party grants to the other a non-exclusive, royalty-free, revocable licence for the duration of these Payment Module Terms to its intellectual property as necessary for the discharge of the other party's obligations under these Payment Module Terms.
- 9.4 Nothing in this clause 9 shall override, supersede or take priority or precedence over any terms of the Services Agreement.

## 10 Limitation of Liability

10.1 Nothing in these Payment Module Terms shall limit or exclude the liability of either party for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) liability under the indemnity granted in clause 5.1(b); or
- (d) any matter for which it would be unlawful to exclude or restrict liability.

10.2 Subject to clause 10.1 above:

- (a) neither party shall under any circumstances whatever be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
  - (i) any loss of profit, sales, revenue or business;
  - (ii) loss of anticipated savings;
  - (iii) loss of or damage to goodwill;
  - (iv) loss of use or corruption of software, data or information;
  - (v) any loss arising out of the lawful termination of these Payment Module Terms; or
  - (vi) any loss that is an indirect or secondary consequence of any act or omission of the party in question.
- (b) The total liability of either party to the other for all other loss or damage arising under or in connection with these Payment Module Terms, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total fees payable by the Beneficiary to Fuuse for the entire duration of these Payment Module Terms.
- (c) The liability of the Beneficiary arising in connection with the supply of the Charging Services shall be as set out in the Charging Services Terms.

- 10.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

## **11 Duration and Termination**

These Payment Module Terms shall become effective on the Commencement Date. Unless terminated earlier in accordance with law, they shall continue for the duration of the Services Agreement.

- 11.1 Without affecting any other right or remedy available to it, either party may terminate these Payment Module Terms with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under these Payment Module Terms on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
  - (b) the other party commits a material breach of any other term of these Payment Module Terms and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - (c) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (d) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (e) the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under the Payment Module Terms has been placed in jeopardy.
- 11.2 On termination of these Payment Module Terms:

- (a) Fuuse shall immediately cease to describe itself as an agent of the Beneficiary;
- (b) each party shall cease to use any intellectual property of the other party; and
- (c) each party shall return to the other party all materials in its possession belonging to the other party or that were otherwise shared in connection with these Payment Module Terms.

11.3 Any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

## 12 General

12.1 **Force Majeure.** Neither party shall be in breach of these Payment Module Terms nor liable for delay in performing, or failure to perform, any of its obligations under these Payment Module Terms if such delay or failure result from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 12 weeks, the party not affected may terminate these Payment Module Terms by giving 14 days' written notice to the affected party.

### 12.2 Assignment and other dealings

- (a) The Beneficiary shall not, without the prior written consent of Fuuse, assign, novate, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Payment Module Terms.
- (b) Fuuse may at any time assign, transfer, charge, sub-contract or deal in any manner with all or any of its rights or obligations under these Payment Module Terms, provided that it gives the Beneficiary reasonable prior written notice of any such dealings.

### 12.3 Confidentiality

- (a) Each party undertakes that it shall not at any time during the term of these Payment Module Terms, and for a period of two years after termination or expiry of these Payment Module Terms, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted in clause 12.3(b).

- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives and advisers who need to know that information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with these Payment Module Terms. Each party shall ensure that its employees, officers, representatives and advisers to whom it discloses the other party's confidential information comply with this clause 12.3(b); and
  - (ii) as may be required by law, to a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with these Payment Module Terms.

#### 12.4 **Entire Agreement**

- (a) These Payment Module Terms constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies for any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Payment Module Terms. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Payment Module Terms.

12.5 **Variation.** No variation of these Payment Module Terms shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.6 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.

12.7 **Severance.** If any provision or part-provision of these Payment Module Terms is or becomes invalid, legal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If that modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity, legality or enforceability of the rest of these Payment Module Terms.

12.8 **Notices**

- (a) Any notice or other communication given to a party under or in connection with these Payment Module Terms shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered:
  - (i) personally;
  - (ii) sent by pre-paid first class post or other next working day delivery service;
  - (iii) by commercial courier; or
  - (iv) by email.
- (b) A notice or communication shall be deemed to have been received:
  - (i) if delivered personally, when left at the address referred to in clause 12.8(a);
  - (ii) if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second business day after posting;
  - (iii) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
  - (iv) if sent by email, one business day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

- 12.9 **Third Party Rights.** No one other than a party to these Payment Module Terms, their successors and permitted assignees, shall have the right to enforce any of these Payment Module Terms.
- 12.10 **Governing Law.** These Payment Module Terms, and any dispute or claim arising out of or in connection with these Payment Module Terms or their subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.
- 12.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Payment Services Terms or their subject matter or formation (including non-contractual disputes or claims).