

## SEAI Electric Vehicle Commercial Fleet Pilot Scheme

### Usage Agreement

#### Terms and Conditions

#### 1. Definitions and Interpretation

1.1. In these terms and conditions, the following terms have the meaning given to them below:

<b>“Applicant”</b>	means the undertaking that has applied to benefit from the Scheme by being provided with the use of an EV for the Trial Period
<b>“Application”</b>	means the completed SEAI Application form and all other supplementary information including any contracts or legal documentation surrounding participation in the scheme, furnished by the Applicant to SEAI or its agents in respect of the Scheme and the use of the EV and/or supply and install of a charging unit.
<b>“EV”</b>	means the electric vehicle that will be provided to the Applicant under the Scheme if the Application is approved.
<b>“Usage Agreement”</b>	means the agreement between SEAI and the Applicant relating to the use of the EV for the Trial Period, in order of priority:  (i) the Letter of Offer and the Usage Agreement including the Schedules contained therein;  (ii) the Application.
<b>“Scheme”</b>	means the Electric Vehicle Commercial Fleet Pilot Scheme 2022.
<b>“Insolvent”</b>	means if (i) an order is made or petition presented for the winding up of the person concerned; (ii) an order is made or petition presented for the appointment of an examiner to the person concerned; (iii) a resolution winding up the person concerned is passed; (iv) the person concerned suffers or a petition is presented for the appointment of a receiver or manager over its undertaking or assets or any part of them; (v) the person concerned enters into a scheme of compromise or arrangement with its creditors; (vi) the person concerned is unable to pay its debts as they fall due within the meaning of section 570 of the Companies Act 2014 or declares that it is unable to pay its debts; (viii) the person concerned is bankrupt; and/or (viii) anything analogous to the foregoing occurs in any jurisdiction.
<b>“Leasing Agreement”</b>	Agreement in the form of a contract between the Applicant and the service provider appointed by SEAI
<b>“EV Letter of Offer”</b>	means the letter confirming SEAI’s approval in principle to provide the use of the EV to the Applicant.
<b>“SEAI”</b>	means the Sustainable Energy Authority of Ireland including their successors and assigns.
<b>“Terms and Conditions”</b>	means the terms and conditions of the Usage Agreement as outlined below.
<b>“Trial Period”</b>	means the duration the Applicant has the use of the EV.

## 2. **Confirmations**

2.1. The Applicant warrants, represents and undertakes to SEAI that:

- (i) the information referred to in the Application is true, accurate and correct in every respect.
- (ii) it has disclosed all information and circumstances relating to the Application and to its business, undertakings, assets and affairs to SEAI as would reasonably be considered material to the Application, the decision to offer the Applicant the use of the EV for the determined Trial Period and/or to the performance of the Applicant's obligations under these Terms and Conditions.
- (iii) it has the necessary powers, competence and vires to apply of the Scheme and to carry out its obligations under these Terms and Conditions.

2.2. In the event that any of the warranties, confirmations, representations or undertakings contained in clause 2.1 of these Terms and Conditions become untrue and/or misleading during the term of the Usage Agreement , the Applicant undertakes and agrees to notify SEAI in writing, in accordance with clause 18 (Notice), with sufficient detail and supporting documentation to enable SEAI to understand the nature and extent of the breach of the Terms of this Usage Agreement .

## 3. **Applicant's General Obligations**

3.1. The Applicant shall:

- (i) not disclose to any other party any confidential or secret information concerning the business or the affairs of SEAI, whether or not the information has been marked or otherwise identified as confidential or secret information; and

3.2. The Applicant shall not without the prior written consent of SEAI (which may be withheld), grant to any third party any interest (whether by way of security, charge or otherwise) in or to any assets relating to the Application or the Scheme.

3.3. The applicant shall ensure that only individuals covered with the appropriate level of insurance cover may operate the EV during the trial period.

## 4. **Compliance with Law**

4.1. The Applicant shall:

- (i) obtain all necessary consents and statutory and/or regulatory approvals and have authority to partake in the Scheme.
- (ii) comply with all applicable laws, in partaking in the Scheme.
- (iii) obtain any relevant permits, approvals, licences, permissions or consents necessary for the operation of its business; and
- (iv) comply with the Terms and Conditions and the Guidelines.

## 5. **Publicity and Case Studies**

5.1. The Applicant shall:

- (i) Commit to sharing outcomes.

- (ii) At Project conclusion i.e. EV trial period completed and vehicle returned, the Applicant will if requested provide a short case study to SEAI which sets out the main elements of the Project (emission savings, cost savings, real life experience anecdotes and quotes, infrastructure use, any evidence of attitude change or behavioural shift, suitability of EV for the purpose). These may be used for further promotion by SEAI or inclusion in reports from SEAI;
- (iii) At Project conclusion, SEAI may contact Applicants to request their participation in surveys (telephone or questionnaire) to determine the impact and achievements of the Scheme and may develop and publish case studies (protecting as appropriate all personal, confidential or commercially sensitive information/data)

5.2. The Applicant shall comply with any reasonable branding requirements stipulated by SEAI. No business branding temporary or otherwise can be added to the interior or exterior of the EV.

5.3. The Applicant, subject to clause 10.1, shall:

i. acknowledge in any publicity concerning the Scheme that the use of the EV has been funded by the SEAI;

ii. work with SEAI to utilise all reasonable opportunities to publicise the support role of SEAI including through billboards, permanent commemorative plaques, posters, information and communication materials, websites, information events and press releases. Details of all such publicity activities shall be notified to SEAI and SEAI shall be afforded the opportunity to participate in major announcements.

5.4. The Applicant shall upon request provide SEAI with all necessary details to SEAI (or its nominee) to enable SEAI (or its nominee) to undertake and complete any case studies relating to the use of the EV and charging infrastructure during the Trial Period.

## 6. Risk in the Project

6.1. The Applicant is not a consumer and SEAI is not a vendor.

6.2. SEAI accepts no liability or responsibility, whether for breach of contract, tort (including negligence), breach of statutory duty or otherwise, in respect of any direct or indirect loss, expense, dispute, claim, proceedings or cause of action arising out of, or in relation to the use of the EV of which a Letter of Offer has issued,. No undertaking, guarantee, assurance or other warranty, express or implied, is given by SEAI, or any of its agents or servants, in respect of the cost, quality, efficiency and/or benefit of the EV provided under the Scheme.

6.3. The Applicant shall fully and effectively indemnify, hold harmless and keep indemnified SEAI from and against all direct and indirect actions, fines, proceedings, costs, awards, claims, loss, liabilities, damages, expenses and demands suffered or incurred or paid out by SEAI arising out of or in connection with the Scheme and/ or the use of the EV during the Trial Period, any breach of the Terms and Conditions, negligence, act or omission of the Applicant and/or their subcontractors, agents, employees, officers and/or representatives.

## 7. Insurance

7.1. The Applicant shall obtain and maintain at all times appropriate insurance cover in respect of the EV in accordance with the Leasing Agreement and prudent commercial practice.

7.2. The Applicant, at all times, will ensure all insurance cover taken out in accordance with this clause is on substantially similar terms to those upon which insurance of that kind is normally taken out and includes non-avoidance and non-invalidation provisions so that any action by or against the Applicant constituting a breach of such policy will not prejudice insurance cover afforded to SEAI.

- 7.3. The Applicant must ensure all parties designated to operate the EV during the trial period are covered under the company vehicle insurance policy.
- 7.4. The Applicant shall fully and effectively indemnify, hold harmless and keep indemnified SEAI from and against all direct and indirect actions, fines, proceedings, costs, awards, claims, loss, liabilities, damages, expenses and demands suffered or incurred or paid out by SEAI arising out of or in connection with the use of the EV during the Trial Period, any breach of this Agreement, negligence, act or omission of the Applicant and/or their subcontractors, agents, employees, officers and/or representatives
- 7.5. The Applicant shall promptly, if requested, provide SEAI with a copy of all insurance policies required under this clause 7.

## **8. Expiry, Termination, Cessation and Repayment**

- 8.1. SEAI, at its absolute discretion, may immediately terminate this Usage Agreement forthwith.
- 8.2. SEAI may immediately terminate this Usage Agreement and may seek total repayment of any or all of the leasing fees already paid to the leasing company for the EV used by the Applicant completely at its own discretion and if any of the following events occur:
- (i) the Applicant is in breach of any term or condition of this Usage Agreement;
  - (ii) the Applicant provides SEAI with any materially misleading or inaccurate information;
  - (iii) the Applicant undertakes activities which SEAI considers are at risk of bringing the reputation of the Scheme or SEAI into disrepute;
  - (iv) the Applicant or its holding company or any of its subsidiaries is Insolvent or SEAI considers that there is a real risk that such may occur;
  - (v) a distress or execution is levied or issued against any of the property of the Applicant or any of its subsidiaries or holding company;
  - (vi) any warranty or representation by the Applicant which is contained in the Application is untrue or inaccurate;
  - (vii) the Applicant is guilty of any fraudulent act or any criminal activity, or commits any negligent act or omission in breach of these Terms and Conditions;
- 8.3. If SEAI seeks repayment of the lease fees in accordance with clause 8.2, the Applicant shall make such repayment in full and without deduction, set-off or withholding of any kind immediately on receipt of a written demand from SEAI. In default of such repayment, such sums shall be recoverable by SEAI, at its absolute discretion, from the Applicant as a simple contract debt in a court of competent jurisdiction.
- 8.4. The termination or expiry of this Usage Agreement does not affect either party's rights and remedies accrued prior to the effective date of the termination or expiration or any rights, remedies or obligations of either party that this Usage Agreement provides or implies survive or commence after the expiration or termination of this Usage Agreement. The following clauses shall survive termination of the Usage Agreement: clause 6 (Risk in the Project), clause 7 (Insurance), clause 8 (Expiry, Termination, Cessation and Repayment), clause 9 (Freedom of Information), clause 10 (General Provisions), clause 11 (Entire Agreement), clause 13 (Dispute Settlement), clause 14 (Complaints and Appeals) and clause 15 (Governing Law and Jurisdiction).

## 9. **Freedom of Information**

- 9.1. The Applicant acknowledges that SEAI is subject to the requirements of the Freedom of Information Act 2014 (“FOIA”) and shall assist and co-operate with SEAI (at the Applicant’s expense) to enable SEAI to comply with these information disclosure requirements.
- 9.2. The Applicant shall provide SEAI with a record in its possession, if and in so far as it relates to the Scheme, and is deemed for the purposes of the FOIA to be held by SEAI, within five working days (or such other period as SEAI may specify) of SEAI requesting that information.
- 9.3. SEAI undertakes to use its best endeavours to hold confidential any information provided by the Applicant subject to its obligations under law, including the FOIA (as amended). Should the Applicant wish that any of the information supplied by him/her should not be disclosed because of its sensitivity, he/she should, when providing the information, identify the same and specify the reasons for its sensitivity. SEAI will consult with the Applicant about such information before making a decision on any Freedom of Information request received.

## 10. **General Provisions**

- 10.1. The Applicant shall not assign or transfer the Usage Agreement, or any of its rights or obligations under it without first obtaining the prior written consent of SEAI, not to be unreasonably withheld
- 10.2. The EV will be made available to the Applicant for the Trial Period which will be a minimum of 3 months and a maximum of 12 months depending on the interest in the Scheme.
- 10.3. Applicants must enter into a Leasing Agreement to receive the EV for the trial period. Applicants must meet all requirements of the leasing companies, including requirements relating to insurance, maintenance, additional charges, accident and incident reporting and other standard terms and conditions. Failure to do so will see the EV and trial slot offered to the next business in line who has registered and interest in the Scheme. The leasing costs of the EV will be invoiced to SEAI.
- 10.4. While the EV should be delivered to the Applicant in a roadworthy condition, Applicants are required to ensure they are satisfied on delivery, and before each use, and during the Trial Period, of the condition of the EV and that all required tax and insurance is displayed.
- 10.5. An EV charge point will be offered to every successful applicant.
- 10.6. Should there be an incident or accident involving the EV during the Trial Period, the Applicant must notify SEAI within 24 hours to provide complete and accurate details of the incident or accident.
- 10.7. A waiver by SEAI of any breach of any Terms or Conditions shall not constitute a general waiver of such Terms and Conditions.
- 10.8. In the event that any of these terms, conditions or provisions or those of any schedule is determined by any competent authority to be invalid, unlawful or unenforceable to any extent such term, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

## 11. **Entire Agreement**

- 11.1. The Applicant has entered into this Usage Agreement as principal on its own behalf. This Usage Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all previous undertakings, negotiations, and discussions, whether oral or written between the parties relating to the subject matter of this Usage Agreement. The Applicant agrees that it has not relied upon, and has no remedies in respect of, any representation, term, condition or warranty except those expressly set out in this Usage Agreement. Amendments to or modifications of this Usage Agreement may be made only by mutual agreement of all parties in

writing and shall be subject to whatever approvals of appropriate authorities as may be required by law.

## 12. **Notice**

- 12.1. Any notice under this Usage Agreement shall be in writing and signed by or on behalf of the party giving it. Any notice under or in connection with this Usage Agreement must be delivered personally or sent by pre-paid registered or recorded delivery post to the party intended to receive the notice at its address set out at the front of this Usage Agreement or its registered office. Unless the contrary is proved, each notice is deemed to have been given or made and delivered (if by post) two (2) working day after posting or (if delivered by hand) the next working day after it was left at the relevant address.

## 13. **Dispute Settlement**

- 13.1. The parties agree that any dispute arising out of or in connection with this Usage Agreement, including the interpretation or fulfilment of any of its provisions, shall be resolved as follows:

- (i) In the first instance, the parties shall submit the dispute to the nominated representative of SEAI nominated representative of the Applicant for resolution.
- (ii) If such disputes cannot be resolved pursuant to the mechanism set out at clause 19.1(i) above within a period of thirty working days, either party may request that the matter is submitted for resolution in accordance with SEAI's Complaints and Appeals Policy contained in the SEAI Customer Charter, published on the SEAI website and as amended by SEAI from time to time.

- 13.2. Where the parties are unable to resolve any dispute which may arise under or in connection with this Usage Agreement through such good faith efforts detailed at clauses 14.1(i) and (ii), SEAI reserves the right to refer the matter to mediation upon notice in writing to the Applicant. The final decision of who will act as mediator will be mutually agreed upon between the parties or in the absence of such agreement within fifteen working days, the decision as to who to appoint as mediator will be referred upon the request of either party, to the President for the time being of the Law Society. The costs of any mediation are to be agreed between the parties in advance.

- 13.3. The Applicant may not instigate legal proceedings in relation to any dispute arising out of or in connection with this Usage Agreement, including the interpretation or fulfilment of any of its provisions, until it has sought, in good faith, to resolve the dispute in accordance with clause 14.1 and clause 14.2, where clause 14.2 is applicable, and it has fully engaged with the corresponding dispute resolution procedures. This does not prevent the Applicant from instigating legal proceedings in order to apply for interim or injunctive relief.

## 14. **Complaints and Appeals**

- 14.1. All complaints and appeals should be submitted to SEAI in accordance with SEAI's Complaints and Appeals Policy contained in the SEAI Customer Charter, published on the SEAI website and as amended by SEAI from time to time. For further information on what constitutes a complaint and/or an appeal please consult the SEAI Customer Charter.

## 15. **Governing Law and Jurisdiction**

- 15.1. Subject to clause 14.1 and 14.2, this Usage 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 construed in accordance with Irish Law and shall be subject to the exclusive jurisdiction of the Irish courts.

16. **State Aid**

16.1. The Applicant acknowledges and agrees that the funding provided for the use of the EV for the Trial Period:

- (i) constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.
- (ii) has not been notified to the European Commission under Article 108(3) of the Treaty on the Functioning of the European Union and is instead being granted in reliance on De Minimis Aid in accordance with **Commission Regulation (EC) No 1407/2013**
- (iii) is being granted on the understanding that the Applicant has not and will not do anything that would breach the State aid rules; and
- (iv) may have to be repaid by the Applicant in part or in full, along with compound interest, where there has been a breach of the State aid rules and, where this is the case, the Applicant shall fully cooperate with and assist SEAI to remedy such non-compliance, including in respect of the recovery of unlawful aid.

16.2. The Applicant represents and warrants that, at the date of this Usage Agreement:

- (i) neither it nor a related company is subject to an outstanding recovery order following a previous European Commission decision declaring an aid granted by a public body in Ireland illegal and incompatible with the internal market; and
- (ii) neither it nor a parent company is an undertaking in difficulty within the meaning of Article 2(18) of the General Block Exemption Regulation.

16.3. The Applicant agrees to notify SEAI immediately if the circumstances identified in clause 16.2 change during the term of this Usage Agreement upon which notice SEAI will be entitled to terminate this agreement if it considers it appropriate to do so.

The Applicant acknowledges and agrees that failure to comply with either clause 16.2 or clause 16.3 entitles SEAI to terminate this Usage Agreement immediately.