

CHARGEPOINT®
MASTER SERVICES AND SUBSCRIPTION AGREEMENT

IMPORTANT: THIS MASTER SERVICES AND SUBSCRIPTION AGREEMENT (“AGREEMENT”) IS A LEGAL AGREEMENT BETWEEN YOU OR THE CORPORATION, PARTNERSHIP OR OTHER LEGAL ENTITY YOU REPRESENT (“SUBSCRIBER”) AND CHARGEPOINT, INC., A DELAWARE CORPORATION (“CPI”). PLEASE READ IT CAREFULLY. BY USING ANY OF THE CHARGEPOINT SERVICES, YOU INDICATE YOUR ACCEPTANCE OF THIS AGREEMENT.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A CORPORATION, PARTNERSHIP OR OTHER LEGAL ENTITY, THAT ENTITY REPRESENTS THAT YOU HAVE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, YOU MAY NOT ENTER INTO THIS AGREEMENT AND SUCH ENTITY MAY NOT USE THE CHARGEPOINT SERVICES.

1. AGREEMENT.

1.1 SCOPE OF AGREEMENT. This Agreement governs the following activities:

- (a) Provisioning of Subscriber’s Charging Station(s), if any, on ChargePoint;
- (b) Activation and use of the Chargepoint Services on Subscriber’s Charging Station(s), if any;
- (c) Subscriber’s use of the APIs as part of the Chargepoint Services;
- (d) Each grant of Rights by Subscriber; and
- (e) Each grant of Rights by a third party to Subscriber.

1.2 EXHIBITS AND PRIVACY POLICY. This Agreement includes the ChargePoint, Inc., Privacy Policy with the Effective Date of December 23, 2008 (the “Privacy Policy”), attached hereto as Exhibit A and incorporated by reference, as amended from time to time, and the following Exhibits, which are made a part of this Agreement, and are hereby incorporated into, this Agreement by reference.

- Exhibit 1: Flex Billing Terms
- Exhibit 2: API Terms
- Exhibit 3: Terms Regarding Granting and Receipt of Rights

In the event of any conflict between the terms of this Agreement on the one hand, and the Privacy Policy or any Exhibit on the other hand, this Agreement shall govern. Capitalized terms not otherwise defined in any Exhibit or the Privacy Policy shall have the same meaning as in this Agreement.

2. DEFINITIONS. The following terms shall have the definitions set forth below when used in this Agreement:

2.1 *“Affiliate”* means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control”, for purposes of this definition, means direct or indirect ownership or control of fifty percent (50%) or more of the voting interests of the subject entity.

2.2 *“APIs”* means, individually or collectively, the application programming interfaces which are made available to Subscriber from time to time, as and when updated by CPI.

2.3 *“ChargePoint Connections”* shall have the meaning ascribed to it in the applicable data sheet. The term ChargePoint Connections shall also mean any successor service provided by CPI.

2.4 *“ChargePoint®”* means the open-platform network of electric vehicle charging stations and the vehicle charging applications the network delivers, that is operated and maintained by CPI (as defined below) in order to provide various services to, among others, Subscriber and its employees.

2.5 *“ChargePoint Services”* means, collectively, the various cloud services offerings (including, without limitation, APIs and application service plans) made available for subscription by CPI.

2.6 *“ChargePoint Application”* means any of the applications established and maintained by CPI which will allow Subscriber to access ChargePoint Services.

2.7 *“Charging Station”* means the electric vehicle charging station(s) purchased by Subscriber, whether manufactured by CPI or by a CPI authorized entity, which are registered and activated on ChargePoint.

2.8 *“Content”* means all data collected or maintained by CPI in connection with the operation of ChargePoint.

2.9 *“CPI Marks”* means the various trademarks, service marks, trade names, logos, domain names, and other distinctive brand features and designations used in connection with ChargePoint and/or CPI manufactured Charging Stations, including without limitation, ChargePoint.

2.10 *“CPI Property”* means (i) ChargePoint, (ii) the ChargePoint Services (including all Content), (iii) all data generated or collected by CPI in connection with the operation of ChargePoint and ChargePoint Services, (iv) the CPI Marks, (v) the ChargePoint Cards, and (vi) all other CPI-supplied material developed or provided by CPI for Subscriber use in connection with the ChargePoint Services.

2.11 *“Documentation”* means written information (whether contained in user or technical manuals, product materials, specifications or otherwise) pertaining to ChargePoint Services and/or ChargePoint and made available from time to time by CPI to Subscriber in any manner (including on-line).

2.12 *“Effective Date”* means the earlier of (a) the date that Subscriber electronically accepts this Agreement, or (b) the date of Subscriber’s first use of the ChargePoint Services.

2.13 *“Intellectual Property Rights”* means all intellectual property rights, including, without limitation, patents, patent applications, patent rights, trademarks, trademark applications, trade names, service marks, service mark applications, copyrights, copyright applications, franchises, licenses, inventories, know-how, trade secrets, Subscriber lists, proprietary processes and formulae, all source and object code, algorithms, architecture, structure, display screens, layouts, inventions, development tools and all documentation and media constituting, describing or relating to the above, including, without limitation, manuals, memoranda and records.

2.14 *“Malicious Code”* means viruses, worms, time bombs, Trojan horses and all other forms of malicious code, including without limitation, malware, spyware, files, scripts, agents or programs.

2.15 *“Party”* means each of CPI and Subscriber.

2.16 *“PII”* means personally identifiable information regarding Subscriber or a User (e.g., name, address, email address, phone number or credit card number) that can be used to uniquely identify, contact or locate Subscriber or such User.

2.17 *“Provisioning”* means activating Charging Stations, warrantees and Service Plans on ChargePoint

2.18 *“Rights”* means the rights, authorizations, privileges, actions, information and settings within the ChargePoint Services which an Authorizing Subscriber grants to an Authorized User, to enable such Authorized User to access, obtain and use certain portions of the ChargePoint Services and certain

information available therein in the course of providing services to or on behalf of such Authorizing Subscriber in connection with one or more of the Authorizing Subscriber's Charging Stations. An Authorizing Subscriber shall be deemed to have granted Rights to the entity that will be responsible for creating Subscriber's account and Provisioning Subscriber's Charging Stations. Such deemed grant may be terminated by Subscriber at any time.

2.19 "Service Plan(s)" means subscription plans to the ChargePoint Services which are offered and sold by CPI from time to time, which vary according to their features, privileges and pricing.

2.20 "Subscriber Content and Services" means any content and/or services that a Subscriber provides or makes available to Users and/or the general public in connection with the ChargePoint Services, other than Content, ChargePoint Services and CPI Property.

2.21 "Subscriber Marks" means the various trademarks, service marks, trade names, logos, domain names, and other distinctive brand features and designations used by Subscriber in connection with its business and/or Charging Stations.

2.22 "Subscription Fees" means the fees payable by Subscriber for subscribing to any ChargePoint Services.

2.23 "Taxes" shall mean all present and future taxes, imposts, levies, assessments, duties or charges of whatsoever nature including without limitation any withholding taxes, sales taxes, use taxes, service taxes, value added or similar taxes at the rate applicable for the time being imposed by any national or local government, taxing authority, regulatory agency or other entity together with any penalty payable in connection with any failure to pay or any delay in paying any of the same and any interest thereon.

2.24 "Token(s)" means the serialized proof of purchase of a Service Plan that is used by the Subscriber in connection with enabling Services and/or provisioning Charging Stations.

2.25 "User" means any person using a Charging Station.

3. AVAILABLE CHARGEPOINT SERVICES & SERVICE PLANS. A description of the various ChargePoint Services and Service Plans currently available for subscription is located on the CPI website. CPI may make other ChargePoint Services and/or Service Plans available from time to time, and may amend the features or benefits offered with respect to any ChargePoint Service or Service Plan at any time and from time to time. Subscription Fees are based on Subscriber's choice of Service Plan and not on actual usage of the Subscription.

4. CPI'S RESPONSIBILITIES AND AGREEMENTS.

4.1 OPERATION OF CHARGEPOINT. CPI agrees to provide and shall be solely responsible for: (i) provisioning and operating, maintaining, administering and supporting ChargePoint and related infrastructure (other than Subscriber's Charging Stations and infrastructure for transmitting data from Charging Stations to any ChargePoint operations center); (ii) provisioning and operating, maintaining, administering and supporting the ChargePoint Applications; and (iii) operating ChargePoint in compliance with all applicable laws. CPI will protect the confidentiality and security of PII in accordance with all applicable laws and regulations and the CPI Privacy Policy.

4.2 LIMITATIONS ON RESPONSIBILITY. CPI shall not be responsible for, and makes no representation or warranty with respect to the following: (i) specific location(s) or number of Charging Stations now, or in the future, owned, operated and/or installed by persons other than Subscriber, or the total number of Charging Stations that comprise ChargePoint; (ii) continuous availability of electrical service to any of Subscriber's Charging Stations; (iii) continuous availability of any wireless or cellular communications network or Internet service provider network necessary for the continued operation by

CPI of ChargePoint; (iv) availability of or interruption of the ChargePoint Network attributable to unauthorized intrusions; and/or (v) charging stations that are not registered with and activated on the ChargePoint Network.

5. SUBSCRIBER'S RESPONSIBILITIES AND AGREEMENTS.

5.1 GENERAL.

(a) All use of ChargePoint and ChargePoint Services by Subscriber, its employees and agents and its grantees of Rights shall comply with this Agreement and all of the rules, limitations and policies of CPI set forth in the Documentation. All ChargePoint Services account details, passwords, keys, etc. are granted to Subscriber solely for Subscriber's own use (and the use of its grantees of Rights), and Subscriber shall keep all such items secure and confidential. Subscriber shall prevent, and shall be fully liable to CPI for, any unauthorized access to or use of ChargePoint or ChargePoint Services via Subscriber's Charging Stations, ChargePoint Services account(s) or other equipment. Subscriber shall immediately notify CPI upon becoming aware of any such unauthorized use.

(b) Subscriber shall be solely responsible for: (i) Provisioning of its Charging Stations, if any; (ii) keeping Subscriber's contact information, email address for the receipt of notices hereunder, and billing address for invoices both accurate and up to date; (iii) updating on the applicable ChargePoint Application, within five (5) business days, the location to which any of Subscriber's Charging Stations are moved; (iv) the maintenance, service, repair and/or replacement of Subscriber's Charging Stations as needed, including informing CPI of the existence of any Charging Stations that are non-operational and not intended to be replaced or repaired by Subscriber; and (v) compliance with all applicable laws.

(c) Subscriber shall deliver in full all benefits promised to Users by Subscriber in exchange for such Users connecting with Subscriber using ChargePoint Connections.

5.2 REPRESENTATIONS AND WARRANTIES OF SUBSCRIBER. Subscriber represents and warrants to CPI that: (i) it has the power and authority to enter into and be bound by this Agreement and shall have the power and authority to install the Charging Stations and any other electrical vehicle charging products which are registered and activated on the ChargePoint Network); (ii) the electrical usage to be consumed by Subscriber's Charging Stations will not violate or otherwise conflict with the terms and conditions of any applicable electrical purchase or other agreement including, without limitation, any lease, to which Subscriber is a party; and (iii) it has not installed or attached and will not install or attach Charging Stations on or to infrastructure not owned by Subscriber without proper authority, or in a manner that will block any easement or right of way.

5.3 CHARGEPOINT CARDS. Subscriber may be permitted by CPI, in CPI's sole discretion, to obtain CPI-provisioned radio-frequency identification cards ("ChargePoint Cards") which enable the individual card recipients to access and use ChargePoint. Subscriber may distribute such ChargePoint Cards to individuals, and each individual ChargePoint Card recipient is responsible for activating his or her ChargePoint Card on ChargePoint directly with CPI on the CPI web site. In no event will Subscriber create any separate ChargePoint accounts for any ChargePoint Card recipients or other third parties, nor will Subscriber create anonymous ChargePoint accounts associated with any ChargePoint Card.

5.4 USE RESTRICTIONS AND LIMITATIONS. Subscriber shall not:

(a) sell, resell, license, rent, lease or otherwise transfer the ChargePoint Services or any Content therein to any third party;

(b) interfere with or disrupt the ChargePoint Services, servers, or networks connected to the ChargePoint Services, or disobey any requirements, procedures, policies, or regulations of networks connected to the ChargePoint Services;

(c) restrict or inhibit any other user from using and enjoying the ChargePoint Services or any other CPI services;

(d) attempt to gain unauthorized access to the ChargePoint Network or the ChargePoint Services or related systems or networks or any data contained therein, or access or use ChargePoint or ChargePoint Services through any technology or means other than those provided or expressly authorized by CPI;

(e) create any ChargePoint Services user account by automated means or under false or fraudulent pretenses, or impersonate another person or entity on ChargePoint, or obtain or attempt to obtain multiple keys for the same URL;

(f) reverse engineer, decompile or otherwise attempt to extract the source code of the ChargePoint Services or any part thereof, or any Charging Station, except to the extent expressly permitted or required by applicable law;

(g) create derivative works based on any CPI Property;

(h) remove, conceal or cover the CPI Marks or any other markings, labels, legends, trademarks, or trade names installed or placed on the Charging Stations or any peripheral equipment for use in connection with Subscriber's Charging Stations;

(i) except as otherwise expressly permitted by this Agreement or in any applicable data sheet relating to a ChargePoint Service, copy, frame or mirror any part of the ChargePoint Services or ChargePoint Content, other than copying or framing on Subscriber's own intranets or otherwise solely for Subscriber's own internal business use and purposes;

(j) access ChargePoint, any ChargePoint Application or the ChargePoint Services for the purpose of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purpose, or for any improper purpose whatsoever, including, without limitation, in order to build a competitive product or service or copy any features, functions, interface, graphics or "look and feel;"

(k) use any robot, spider, site search/retrieval application, or other device to retrieve or index any portion of the ChargePoint Services or Content or collect information about ChargePoint users for any unauthorized purpose;

(l) upload, transmit or introduce any Malicious Code to ChargePoint or ChargePoint Services;

(m) use any of the ChargePoint Services if Subscriber is a person barred from such use under the laws of the United States or of any other jurisdiction; or

(n) use the ChargePoint Services to upload, post, display, transmit or otherwise make available (A) any inappropriate, defamatory, obscene, or unlawful content; (B) any content that infringes any patent, trademark, copyright, trade secret or other proprietary right of any party; (C) any messages, communication or other content that promotes pyramid schemes, chain letters, constitutes disruptive commercial messages or advertisements, or is prohibited by applicable law, the Agreement or the Documentation.

5.5 CONTENT.

(a) ChargePoint Content (including but not limited to Charging Station data and status) is provided for planning purposes only. Subscriber may find that various events may mean actual Charging Station conditions (such as availability or pricing) differ from what is set forth in the Content. In addition, certain Charging Station-related Content, including Charging Station name and use restrictions, is set by the Charging Station owner and is not verified by CPI. Subscriber should exercise judgment in Subscriber's use of the Content.

(b) Certain Content may be provided under license from third parties and is subject to copyright and other intellectual property rights of such third parties. Subscriber may be held liable for any unauthorized copying or disclosure of such third party-supplied Content. Subscriber's use of such Content may be subject to additional restrictions set forth in the Documentation.

(c) Subscriber shall not copy, modify, alter, translate, amend, or publicly display any of the Content except as expressly permitted by the Documentation. Subscriber shall not present any portion of the Content in any manner, that would (i) make such Content false, inaccurate or misleading, (ii) falsify or delete any author attributions or labels of the origin or source of Content, or (iii) indicate or suggest that the Charging Station locations provided as part of the Content are anything other than ChargePoint® Network Charging Stations.

(d) Subscriber shall not remove, obscure, or alter in any manner any proprietary rights notices (including copyright and trademark notices), warnings, links or other notifications that appear in the ChargePoint Service.

6. SERVICES FEES AND PAYMENT TERMS.

6.1 SERVICES FEES. Subscriber shall pay all Services Fees within thirty (30) days of Monterey County Auditor Controller's Office receipt of CPI's invoice from Monterey County Agricultural Commissioner. All payments shall be made in U.S. Dollars by check, wire transfer, ACH payment system or other means approved by CPI. Fees payable to CPI do not include any Taxes, and Subscriber is responsible for any and all such Taxes. All payment obligations under this Agreement are, except as otherwise provided in this Agreement, non-cancelable and non-refundable.

6.2

7. INTELLECTUAL PROPERTY RIGHTS AND LICENSES.

7.1 CPI PROPERTY. As between CPI and Subscriber, CPI retains and reserves all right, title and interest (including all related Intellectual Property Rights) in and to the CPI Property and any improvements thereto. No rights are granted to Subscriber in the CPI Property hereunder except as expressly set forth in this Agreement.

7.2 SUBSCRIBER PROPERTY. As between CPI and Subscriber, Subscriber retains and reserves all right, title and interest (including all related Intellectual Property Rights) in and to (i) all Subscriber Marks and (ii) all Subscriber Content and Services (collectively, the "Subscriber Property"). No rights are granted to CPI in the Subscriber Property hereunder except as expressly set forth in this Agreement.

7.3 LIMITED LICENSE TO SUBSCRIBER. CPI hereby grants to Subscriber a royalty-free, non-assignable, non-transferable, and non-exclusive license to use the CPI Property solely in accordance with the terms of this Agreement (including without limitation all limitations and restrictions on such use) to the extent necessary for Subscriber to access, use and receive the ChargePoint Services as permitted herein.

7.4 LIMITED LICENSE TO CPI. Subscriber hereby grants to CPI a non-assignable, non-transferable, and non-exclusive license to use the Subscriber Property solely in accordance with the terms of this Agreement (including without limitation all limitations and restrictions on such use) to the extent necessary for CPI to provide the ChargePoint Services. CPI may utilize the Subscriber Marks to advertise that Subscriber is using the ChargePoint Services. The foregoing license includes a perpetual and irrevocable right of CPI to reproduce, adapt, modify, translate, publicly perform, publicly display and distribute all Subscriber Content and Services submitted, posted or displayed by Subscriber in the ChargePoint Services, solely for the purpose of enabling CPI to operate, market and promote the ChargePoint Services, and to index and serve such Subscriber Content and Services as search results through ChargePoint Services. CPI shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable perpetual license to use or incorporate in the ChargePoint Services any suggestions, enhancement requests, recommendations or other feedback provided by Subscriber or Subscriber Authorized Users relating to the ChargePoint Services.

7.5 ADDITIONAL TERMS REGARDING CPI MARKS.

(a) USE LIMITATIONS. Subscriber shall display the CPI Marks in connection with Subscriber Charging Stations as required in this Agreement during the term of Subscriber's Service Plan. Subscriber shall not use any of the CPI Marks for or with any products other than its Charging Stations. From time to time, CPI may provide updated CPI Mark usage guidelines on the ChargePoint Application or elsewhere in the Documentation, and Subscriber shall thereafter comply with such updated guidelines. For any use of the CPI Mark not authorized by such guidelines, or if no such guidelines are provided, then for each initial use of the CPI Mark, Subscriber must obtain CPI's prior written consent, which shall not be unreasonably withheld or delayed, and after such consent is obtained, Subscriber may use the CPI Mark in the approved manner. All use by Subscriber of CPI's Marks (including any goodwill associated therewith) will inure to the benefit of CPI.

(b) PROHIBITIONS. Subscriber shall not use or display any CPI Mark (or any likeness of a CPI Mark):

(i) as a part of the name under which Subscriber's business is conducted or in connection with the name of a business of Subscriber or its Affiliates;

(ii) in any manner that (x) implies a relationship or affiliation with CPI other than as described under the Agreement, (y) implies any sponsorship or endorsement by CPI, or (z) can be reasonably interpreted to suggest that any Subscriber Content and Services has been authored by, or represents the views or opinions of CPI or CPI personnel;

(iii) in any manner intended to disparage CPI, ChargePoint, or the ChargePoint Services, or in a manner that is misleading, defamatory, infringing, libelous, disparaging, obscene or otherwise objectionable to CPI;

(iv) in any manner that violates any law or regulation; or

(v) that is distorted or altered in any way (including squeezing, stretching, inverting, discoloring, etc.) from the original form provided by CPI.

(c) NO REGISTRATION OF CPI MARKS. Subscriber shall not, directly or indirectly, register or apply for, or cause to be registered or applied for, any CPI Marks or any patent, trademark, service mark, copyright, trade name, domain name or registered design that is substantially or confusingly similar to a CPI Mark, patent, trademark, service mark, copyright, trade name, domain name or registered design of CPI, or that is licensed to, connected with or derived from confidential, material or proprietary information imparted to or licensed to Subscriber by CPI. At no time will Subscriber

challenge or assist others to challenge the CPI Marks (except to the extent such restriction is prohibited by law) or the registration thereof by CPI.

(d) TERMINATION AND CESSATION OF USE OF CPI MARKS. Upon termination of this Agreement, Subscriber will immediately discontinue all use and display of all CPI Marks.

7.6

8. TERM AND TERMINATION.

8.1 TERM OF AGREEMENT. This Agreement shall become effective on the last date opposite the respective signatures, and shall continue until the expiration of all of Subscriber's Service Plans.

8.2 SERVICE PLAN TERM. (a) Each Service Plan acquired by Subscriber shall commence as follows: Each Service Plan acquired for use with a new Charging Station will commence on the earlier of (i) the date of Provisioning such new Charging Station, or (ii) one year from the date the Token(s) necessary for Provisioning such new Charging Station is made available to Subscriber or its installer. Renewals of Service Plans will commence on the date of the expiration of the Subscription being renewed. All other Service Plans will commence on the date of activation of such Service Plans, but in no event more than one year after the date the Token(s) necessary for such activation is made available to Subscriber. Each Subscriber Service Plan shall continue for the applicable duration thereof, unless this Agreement is terminated earlier in accordance with its terms.

8.3 TERMINATION BY CPI.

(a) This Agreement may be immediately terminated by CPI: (i) if Subscriber is in material breach of any of its obligations under this Agreement, and has not cured such breach within thirty (30) days (or within fifteen [15] days in the case of any payment default) of Subscriber's receipt of written notice thereof; (ii) Subscriber becomes the subject of a petition in bankruptcy or any other proceeding related to insolvency, receivership, liquidation or an assignment for the benefit of creditors; (iii) upon the determination by any regulatory body that the subject matter of this Agreement is subject to any governmental regulatory authorization or review that imposes additional costs of doing business upon CPI; or (iv) as otherwise explicitly provided in this Agreement. Regardless of whether Subscriber is then in breach, CPI may, in its reasonable discretion, determine that it will not accept any renewal by Subscriber of its subscription to ChargePoint Services. In such case, this Agreement shall terminate upon the later of the expiration of all of Subscriber's subscriptions to ChargePoint Services.

(b) CPI may in its discretion suspend Subscriber's continuing access to the ChargePoint Services or any portion thereof if (A) Subscriber has breached any provision of this Agreement, or has acted in manner that indicates that Subscriber does not intend to, or is unable to, comply with any provision of this Agreement; (B) such suspension is required by law (for example, due to a change to the law governing the provision of the ChargePoint Services); or (c) providing the ChargePoint Services to Subscriber could create a security risk or material technical burden as reasonably determined by CPI.

8.4 TERMINATION BY SUBSCRIBER.

This Agreement may be immediately terminated by Subscriber without prejudice to any other remedy of Subscriber at law or equity: (i) if CPI is in material breach of any of its obligations under this Agreement, and has not cured such breach within thirty (30) days of the date of its receipt of written notice thereof, or (ii) CPI becomes the subject of a petition in bankruptcy or any other proceeding related to insolvency, receivership, liquidation or an assignment for the benefit of creditors.

8.5 REFUND OR PAYMENT UPON TERMINATION. Upon any termination of this Agreement for cause by Subscriber pursuant to Section 9.4(i) or by CPI pursuant to Section 9.3(a)(iii), CPI shall refund to Subscriber a pro-rata portion of any pre-paid Subscription Fees based upon the remaining Service Plan term. Upon any termination for any other reason, Subscriber shall not be entitled to any refund of any Subscription Fees as a result of such termination. In no event shall any termination relieve Subscriber of any unpaid Subscription Fees due CPI for the Service Plan term in which the termination occurs or any prior Service Plan term.

8.6 SURVIVAL. Those provisions dealing with the Intellectual Property Rights of CPI, limitations of liability and disclaimers, restrictions of warranty, Applicable Law and those other provisions which by their nature or terms are intended to survive the termination of this Agreement will remain in full force and effect as between the Parties hereto regardless of the termination of this Agreement.

8.7 INDEMNIFICATION. CPI shall indemnify, defend and hold harmless the County, its officers, agents, and employees from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any person, firm or corporation for damage, injury or death arising out of or connected with CPI's negligence or willful misconduct.

8.8 Limitation of Liability:

Except for defense and indemnification obligations, as set forth within this Agreement, or any breach by a Party of its obligations concerning the intellectual property rights of the other Party, neither Subscriber nor CPI shall be liable to the other for any damages exceeding the greater of (i) the aggregate amount of Subscription Fees paid by Subscriber during the immediately preceding 12 month period or (ii) twenty five thousand dollars (\$25,000).

8.9 Insurance:

Without limiting CPI's duty to indemnify, CPI shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability: Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

9. GENERAL.

9.1 AMENDMENT OR MODIFICATION. This Agreement may only be amended pursuant to a writing executed by an authorized signatory of each of the Parties.

9.2 WAIVER. The failure of either Party at any time to enforce any provision of this Agreement shall not be construed to be a waiver of the right of such Party to thereafter enforce that provision or any other provision or right.

9.3 FORCE MAJEURE. Neither CPI nor Subscriber will be liable for failure to perform any of its obligations hereunder due to causes beyond such party's reasonable control and occurring without its fault or negligence, including but not limited to fire, flood, earthquake or other natural disaster (irrespective of such Party's condition of any preparedness therefore); war, embargo; riot; strike; labor action; any lawful order, decree, or other directive of any government authority that prohibits a Party from performing its obligations under this Agreement; material shortages; shortage of transport; and failures of suppliers to deliver material or components in accordance with the terms of their contracts.

9.4 ARBITRATION. This Agreement is to be construed according to the laws of the State of California, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict of law provisions that would require application of another choice of law. Except with respect to any matter relating to Subscriber's violation of the intellectual property rights of CPI, any dispute arising from or relating to this Agreement shall be subject to Alternative Dispute Resolution ("ADR") and shall be mediated or arbitrated in Monterey County, California. The ADR shall be administered by the Superior Court of the State of California, County of Monterey or by the Judicial Arbitration and Mediation Service ("JAMS") in accordance with its Comprehensive Arbitration Rules and Procedures. Judgment on any award may be entered in any court of competent jurisdiction. A mediator, mutually agreeable to the Parties shall be consulted prior to arbitration. All claims shall be brought in the parties' individual or public agency capacity, and not as a plaintiff or class member in any purported class or representative proceeding. With respect to any matter relating to the intellectual property rights of CPI, such claim may be litigated in a court of competent jurisdiction.

9.5 NOTICES. Any notice required or permitted by this Agreement shall be sent (a) if by CPI, via electronic mail to the address indicated by Subscriber in Subscriber's ChargePoint Services account; or (b) if by Subscriber, via electronic mail to mssa@chargepoint.com.

9.6 INJUNCTIVE RELIEF. Either Party is entitled to seek equitable relief, including but not limited to preliminary injunction and injunction, in addition to all other remedies.

9.7 SEVERABILITY. Except as otherwise specifically provided herein, if any term or condition of this Agreement or the application thereof to either Party will to any extent be determined jointly by the Parties or by any judicial, governmental or similar authority, to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to this Agreement, the Parties or circumstances other than those as to which it is determined to be invalid or unenforceable, will not be affected thereby.

9.8 ASSIGNMENT. Subscriber may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of CPI (not to be unreasonably withheld). In the event of any purported assignment in breach of this Section, CPI shall be entitled, at its sole discretion, to terminate this Agreement upon written notice given to Subscriber. CPI may assign its rights and obligations under this Agreement. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. **NO AGENCY OR PARTNERSHIP.** CPI, in the performance of this Agreement, is an independent contractor. In performing its obligations under this Agreement, CPI shall maintain complete control over its employees, its subcontractors and its operations. No partnership, joint venture or agency relationship is intended by CPI and Subscriber to be created by this Agreement. Neither Party has any right or authority to assume or create any obligations of any kind or to make any representation or warranty on behalf of the other Party, whether express or implied, or to bind the other Party in any respect whatsoever.

9.9 ENTIRE AGREEMENT. This Agreement (including the attached Exhibits) contains the entire agreement between the Parties with respect to the ChargePoint Master Services and Subscription Agreement subject matter hereof and supersedes and cancels all previous and contemporaneous agreements, negotiations, commitments, understandings, representations and writings. All purchase orders issued by Subscriber shall state that such purchase orders are subject to all of the terms and conditions of this Agreement, and contain no other term other than the type of Service Plan, the number of Charging Stations for which such Service Plan is ordered, the term of such Service Plans and applicable Subscription Fees. To the extent of any conflict or inconsistency between the terms and conditions of this Agreement and any purchase order, this Agreement shall prevail. Notwithstanding

any language to the contrary therein, no terms or conditions stated in any other documentation shall be incorporated into or form any part of this Agreement, and all such purported terms and conditions shall be null and void. In the event there is any conflict between this Agreement and any on-line Agreement concerning the ChargePoint Master Services and Subscription Agreement which is the subject matter of this Agreement, the signed hard copy of this Agreement shall prevail.

9.10 COPYRIGHT POLICIES. It is CPI's policy to respond to notices of alleged copyright infringement that comply with applicable international intellectual property law (including, in the United States, the Digital Millennium Copyright Act) and to terminate the accounts of repeat infringers.

9.11 THIRD PARTY RESOURCES. The ChargePoint Services may include hyperlinks to other websites or resources. CPI has no control over any web sites or resources that are provided by companies or persons other than CPI. Subscriber acknowledges and agrees that CPI is not responsible for the availability of any such web sites or resources, CPI does not endorse any advertising, products or other materials on or available from such web sites or resources, and CPI is not liable for any loss or damage that may be incurred by Subscriber as a result of any reliance placed by Subscriber on the completeness, accuracy or existence of any advertising, products, or other materials on, or available from, such websites or resources.

9.12 COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute but one and the same Agreement. In the event there is any conflict between this Agreement and any on-line Agreement concerning the ChargePoint Master Services and Subscription Agreement which is the subject matter of this Agreement, the signed hard copy of this Agreement shall prevail.

9.13 ENGLISH LANGUAGE AGREEMENT GOVERNS. Where CPI has provided Subscriber with a translation of the English language version of this Agreement, Subscriber agrees that the translation is provided for Subscriber's convenience only and that the English language version of this Agreement governs Subscriber's relationship with CPI. If there is any conflict between the English language version of this Agreement and such translation, the English language version will prevail.

10. SIGNATURE PAGE.

IN WITNESS WHEREOF, Subscriber and CPI have executed this Agreement as of the date and year written below.

COUNTY OF MONTEREY

CHARGEPOINT, INC.

By: _____

Contracts/Purchasing Officer

By: _____

Signature of Chair, President or V.P.

Print Name: _____

Its: _____

(Print Title of Signatory)

Date: _____

Date: _____

By: _____

Department Head (if applicable)

By: _____

Signature of Secretary, Asst. Secty.,

CFO, Treasurer, or Asst.

Treasurer

Date: _____

Print Name: _____

Its: _____

(Print Title of Signatory)

Approved as to Form & Legality

By: _____

Deputy County Counsel

Date: _____

Date: _____

Approved as to Fiscal Provisions

By: _____

Auditor/Controller

Date: _____

Approved as to Liability Provisions

By: _____

Risk Manager

Date: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers pursuant to California Corporations Code Section 313.

EXHIBIT 1
FLEX BILLING TERMS

This Exhibit sets forth certain additional terms and conditions (“Flex Billing Terms”) pursuant to which Subscriber may charge Users fees for the use of Subscriber’s Charging Stations. In order to charge such fees, Subscriber must (1) subscribe to a Service Plan that includes CPI’s management, collection and/or processing services related to such fees (“Flex Billing”), and (2) activate use CPI Flex Billing services pursuant to the terms of these Flex Billing Terms. See Appendix A, Flex Billing Activation Form, below, for instructions on activating Flex Billing.

1. **DEFINITIONS.** The following additional defined terms shall apply to these Flex Billing Terms:

1.1 **“Net Session Fees”** means the total amount of Session Fees collected on behalf of the Subscriber by CPI, less Session Authorization Fees, Session Processing Fees and Taxes, if any, required by law to be collected by CPI from Users in connection with the use of Charging Stations. Except as required by law, Subscriber shall be responsible for the payment of all Taxes incurred in connection with use of Subscriber’s Charging Stations.

1.2 **“Session” or “Charging Session”** means a session during which a User uses Subscriber’s Charging Station to charge his or her electric vehicle for a continuous period of time not less than ten (10) minutes commencing when a User has accessed such Charging Station and ending when such User has terminated such access.

1.3 **“Session Authorization Fees”** means the fees payable by the Subscriber to CPI to pre-authorize a Charging Session at a Charging Station. The Session Authorization Fees is set forth below.

1.4 **“Session Fees”** means the fees set by the Subscriber for a Charging Session, inclusive of any applicable Taxes.

1.5 **“Session Processing Fees”** means the fees charged by CPI for the management, collection and processing of Session Fees on behalf of Subscriber and the remittance of Net Session Fees to Subscribers. The Session Processing Fee is set forth below.

2. **FLEX-BILLING SERVICE FOR CHARGING STATIONS.**

2.1. **SESSION FEES.** Subscriber shall have sole authority to determine and set in real-time the Session Fees applicable to Subscriber’s Charging Stations. Subscriber shall be solely responsible for determining and charging Session Fees in compliance with all applicable laws and regulations (including without limitation any restriction on Subscriber’s use of per-kWh pricing). Subscriber acknowledges that CPI is not responsible for informing Subscriber of applicable laws or changes thereto, and CPI will not be liable to Subscriber or any third party for any alleged or actual failure of Subscriber to comply with such applicable laws and regulations.

2.2 **DEDUCTIONS FROM SESSION FEES.** In exchange for CPI collecting Session Fees on behalf of the Subscriber, the Subscriber hereby authorizes CPI to deduct from all Session Fees collected: (i) a Session Authorization Fee; (ii) a Session Processing Fee; and (iii) to the extent required by Section 3, applicable Taxes. The Session Authorization Fee and the Session Processing Fees shall be charged in an amount and subject to the terms set forth in these Flex Billing Terms.

2.3 **PAYMENT TO SUBSCRIBER OF NET SESSION FEES.** CPI shall remit Net Session Fees to Subscriber not more than thirty (30) days after the end of each calendar month to the address set forth in Subscriber’s Account information registered on the applicable Network Web Application.

Notwithstanding the foregoing, no such payment will be required if at the end of any calendar month the amount due to Subscriber hereunder is less than fifty U.S. Dollars (\$50), except in connection with the expiration or termination of this Agreement. In no event shall CPI remit amounts due to Subscriber, regardless of the amount then due, later than thirty (30) days following the end of each calendar quarter.

3. TAXES. Unless required by law or otherwise stated herein, Session Authorization Fees and Session Processing Fees do not include any Taxes. Subscriber is responsible for the payment of all Taxes incurred in connection with Session Fees; provided that CPI is solely responsible for all Taxes assessable based on CPI's income, property and employees. Where CPI is required by law to collect and/or remit the Taxes for which Subscriber is responsible, the appropriate amount shall be invoiced to Subscriber and deducted by CPI from Session Fees, unless Subscriber has otherwise provided CPI with a valid tax or regulatory exemption certificate or authorization from the appropriate taxing or regulatory authority.

4. APPLICABLE FEES. The following fee schedule sets forth the Session Authorization Fees and Session Processing Fees to be charged by CPI in connection with the provision of Flex Billing services.

<u>Fee Schedule</u>	<u>Transaction Volume</u>	<u>For Each Charging Session using ChargePoint Card (per Host)</u>	<u>For Each Charging Session Using Credit Card (per Host)</u>
Session Authorization Fee¹	<1,500/month	\$0.40 per Session	\$0.45 per Session
	<3,000/month	\$0.35 per Session	\$0.40 per Session
	<6,000/month	\$0.30 per Session	\$0.35 per Session
	>6,000/month	\$0.25 per Session	\$0.30 per Session
Session Processing Fee²	<1,500/month	5.0% of Session Fees	6.0% of Session Fees
	<3,000/month	4.5% of Session Fees	5.5% of Session Fees
	<6,000/month	3.5% of Session Fees	4.0% of Session Fees
	>6,000/month	3.0% of Session Fees	3.5% of Session Fees

¹ The Session Authorization Fee may not be increased more than once in any twelve (12) month period nor more than the greater of (i) ten percent (10%) or (ii) the Consumer Price Index rate of change promulgated by the United State Bureau of Labor Statistics with respect to the 12-month period just then ended when any notice of change is given by CPI to Subscribers.

² CPI may increase the Session Processing Fee payable pursuant to this Agreement at any time upon not less than one hundred eight (180) days notice (the "**Notice Period**") given by electronic notice posted to the Subscriber Application and sent to each individual Subscriber Account, and any such change shall thereafter be binding and enforceable with respect to Subscriber after the expiration of such Notice Period; *provided, further*, that the Session Processing Fee may not be increased by more than one percentage point in any twelve (12) month period, nor in the aggregate, increased to more than twenty percent (20.00%) of Session Fees at any time.

Appendix A - Flex Billing Activation Form

Instructions: Complete, sign and fax this form to ChargePoint Accounts Payable (+1-214-716-1244) or Email to MSSA@coulombtech.com to activate the Flex Billing service. All fields are required (except where noted).

Subscriber's Legal Name:	
Subscriber's Business Name, if different from above:	
Business Category: <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Corporation <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Exempt Payee <input type="checkbox"/> Other _____	
Subscriber's Federal Tax ID or Social Security Number:	
Subscriber's Legal Address:	
Contact Name:	Contact E-mail:
Contact Phone:	Contact Fax:
Remit Payment By: <input type="checkbox"/> Check <input type="checkbox"/> ACH (electronic transfer)	
Check Remittance Address if different from above:	

ACH Subscribers only (skip to signature below if selecting payment by Check):

<p><i>I hereby authorize ChargePoint, Inc., hereinafter referred to as CPI, to initiate ACH credit entries to my account indicated below at the depository financial institution named below. If an overpayment is made to my account that is not valid, I agree to refund the overpayment to CPI. I acknowledge that the origination of ACH transactions to my account must comply with the provisions of NACHA rules and U.S. law. This authorization shall remain in effect unless and until CPI has received written notification from me that this authorization has been terminated in such time and manner to afford CPI and financial institution reasonable opportunity to act on it. Undersigned represents and warrants to CPI that the person executing this Release is an authorized signatory on the account referenced below and all information regarding the Account and account owner is true and correct.</i></p>	
Bank Name:	
Bank Address:	
ABA Routing Number:	
Account Number:	Account Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings
ACH Subscribers - please attach a pre-printed voided check	

Subscriber agrees to activate Flex Billing:

Signature:	Date:
Print Name:	Title:

OFFICE USE ONLY: Vendor ID: _____ Entered by: _____ Date: _____

EXHIBIT 2
API TERMS

This Exhibit sets forth certain additional terms and conditions (“API Terms”) governing Subscriber’s use of the APIs in connection with Subscriber’s use of the ChargePoint Services. The API Terms are part of the Agreement, and all such use of the APIs remains subject to the Agreement terms.

1. **ADDITIONAL DEFINITIONS.** The following additional definitions shall apply to the API Terms.

1.1 **“API Implementation”** means a Subscriber software application or website that uses any of the APIs to obtain and display Content in conjunction with Subscriber Content and Services.

1.2 **“API Documentation”** means all Documentation containing instructions, restrictions or guidelines regarding the APIs or the use thereof, as amended and/or supplemented by CPI from time to time.

1.3 **“CPI Site Terms”** means the Terms and Conditions displayed on CPI’s website, governing use of CPI’s website and the ChargePoint Services by visitors who are not Service Plan subscribers.

2. **API USE.** Subscriber may use the APIs as and to the extent permitted by Subscriber’s Service Plan and the API Documentation, subject to the terms and conditions of the Agreement.

2.1 **AVAILABLE APIs AND FUNCTION CALLS.** The APIs give Subscriber access to information through a set of function calls. The particular APIs and API function calls made available by CPI from time to time (and the Content available through such APIs and function calls) will be limited by Subscriber’s Service Plan, and Subscriber’s particular Service Plan may not include all APIs and function calls then available from CPI.

2.2 **USE AND DISPLAY OF CONTENT.** Subscriber is permitted to access, use and publicly display the Content with Subscriber Content and Services in Subscriber’s API Implementation, subject to the following requirements and limitations.

(a) All Charging Station locations provided to Subscriber as part of the Content shall be clearly identified by Subscriber in Subscriber’s API Implementation as ChargePoint[®] Network Charging Stations and shall contain the Brand Identifiers required by the API Documentation. In no event shall Subscriber’s API Implementation identify or imply that any Charging Station is a part of any network of charging stations other than ChargePoint.

(b) Subscriber shall keep the Content used by Subscriber’s API Implementation current with Content obtained with the APIs to within every forty eight (48) hours.

(c) Content provided to Subscriber through the APIs may contain the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of CPI’s business partners and/or other third party rights holders of Content indexed by CPI, which may not be deleted or altered in any manner.

(d) Subscriber shall not:

(i) pre-fetch, cache, or store any Content, except that Subscriber may store limited amounts of Content for the purpose of improving the performance of Subscriber's API Implementation if Subscriber does so temporarily, securely, and in a manner that does not permit use of the Content outside of the ChargePoint Service;

(ii) hide or mask from CPI the identity of Subscriber's service utilizing the APIs, including by failing to follow the identification conventions listed in the API Documentation; or

(iii) defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others.

2.3 REQUIRED INFORMATION. Subscriber must:

(a) display to all viewers and users of Subscriber's API Implementation the link to the CPI Site Terms and Conditions as presented through the ChargePoint Services or described in the Documentation;

(b) explicitly state in the use terms governing Subscriber's API Implementation that, by using Subscriber's API Implementation, such viewers and users are agreeing to be bound by the CPI Site Terms; and

(c) include in Subscriber's API Implementation, and abide by, a privacy policy complying with all applicable laws; and

(d) comply with all applicable laws designed to protect the privacy and legal rights of users of Subscriber's API Implementation.

2.4 REPORTING. Subscriber must implement reporting mechanisms, if any, that CPI requires in the API Documentation.

3. CPI BRANDING REQUIREMENTS AND RESTRICTIONS.

3.1 MANDATORY CPI BRANDING. Subject to Section 3.2 below and the restrictions on use of CPI Marks set forth in the Agreement, Subscriber agrees that each page comprising Subscriber's API Implementation will include a ChargePoint logo and will state that Subscriber's application or website is provided, in part, through the ChargePoint Services.

3.2 RESTRICTIONS. Subscriber shall not:

(a) display any CPI Mark as the most prominent element on any page in Subscriber's API Implementation or Subscriber's website (except as used in connection with the display of Charging Stations); or

(b) display any CPI Mark anywhere in Subscriber's API Implementation or on Subscriber's website if Subscriber's API Implementation or website contains or displays adult content or promotes illegal activities, gambling, or the sale of tobacco or alcohol to persons under twenty-one (21) years of age.

EXHIBIT 3
TERMS REGARDING GRANTING OF RIGHTS

This Exhibit sets forth certain additional terms and conditions applicable to Authorizing Subscribers and Authorized Users regarding the granting of Rights (“Rights Terms”). The Rights Terms are part of the Agreement, and all use of the ChargePoint Services permitted pursuant to the Rights Terms remains subject to the Agreement.

1. **ADDITIONAL DEFINITIONS.** The following additional definitions shall apply.

1.1 **“Authorizing Subscriber”** means a Subscriber that has granted Rights.

1.2 **“Authorized User”** means a Subscriber that is granted Rights. For purposes of this Agreement, a Subscriber shall be deemed to have granted Rights to the entity assisting Subscriber with Provisioning creating its account and initiating Subscriber’s access to Services.

1.3 **“Granted Rights”** means those rights which (i) an Authorizing Subscriber may grant to an Authorized User using the normal functions of ChargePoint and (ii) which such Authorizing Subscriber has actually granted to such Authorized user.

2. **TERMS.** This Section governs Subscriber’s granting of Rights as an Authorizing Subscriber.

2.1 **LIMITED RIGHTS.** An Authorized User’s right to access and use the ChargePoint Services for and on behalf of an Authorizing Subscriber is limited to the specific Rights granted by such Authorizing Subscriber to such Authorized User. Such Rights may be limited according to the Service Plan(s) subscribed to by Subscriber. Subscriber may revoke Rights, or any portion thereof, it has granted to an Authorized User at will. In no event may Subscriber grant Rights in excess of those provided to it through the Service Plan(s) to which it has subscribed.

2.2 **RESPONSIBILITY FOR AUTHORIZED USER.** All use of the ChargePoint Services by an Authorized User exercising Rights granted by Subscriber shall be subject to the terms and conditions of the Agreement (including without limitation Subscriber’s indemnification obligation pursuant to Section 10 thereof). Subscriber shall be responsible for the actions, omissions, or performance of such Authorized User while exercising any such Rights, as if such action, omission or performance had been committed by Subscriber directly.

2.3 **NO AGREEMENT.** Subscriber acknowledges and agrees that the ChargePoint Services merely enable an Authorizing Subscriber to extend Rights to Authorized Users. The mere extension of such Rights by an Authorizing Subscriber to an Authorized User does not constitute an agreement between Authorizing Subscriber and the Authorized User with respect to the granted Rights or the exercise of such Rights by the Authorized User. CPI does not, either through the terms of the Agreement or the provision of ChargePoint Services undertake to provide any such agreement. It is the responsibility of the Authorizing Subscriber and the Authorized User to enter into such an agreement on terms mutually acceptable to each. CPI expressly undertakes no liability with respect to such an agreement and Authorizing Subscriber and Authorized User each fully and unconditionally release CPI from any liability arising out of such an agreement. Further Authorizing Subscriber and Authorized User agree to indemnify and hold CPI, its officers, directors, agents, affiliates, distribution partners, licensors and suppliers harmless from and against any and all claims, actions, proceedings, costs, liabilities, losses and expenses (including, but not limited to, reasonable attorneys’ fees) (collectively, “Claims”) suffered or incurred by such indemnified parties resulting from or arising out of such agreement. Authorizing Subscriber and Authorized User will each

cooperate as fully as reasonably required in the defense of any claim. CPI reserves the right, at its own expense, to participate in the defense of any matter subject to indemnification by Authorizing Subscriber..