

**CONTRACT MA-080-20010050  
WITH  
CHARGEPOINT, INC.  
FOR  
NETWORK ELECTRIC VEHICLE CHARGING STATIONS, SERVICE AND  
MAINTENANCE**

THIS CONTRACT MA-080-20010050 for **Network Electric Vehicle Charging Stations (EVCS), Service and Maintenance** (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California; hereinafter referred to as “County and ChargePoint, Inc., with a place of business at 240 East Hacienda Avenue, Campbell, CA 95008 (hereinafter referred to as “Contractor”), with a County and Contractor sometimes individually referred to as “Party” or collectively as “Parties”.

**ATTACHMENTS**

THIS CONTRACT is comprised of this document and the following Attachments, which are attached hereto and incorporated by this reference as parts of this Contract:

Attachment A – Scope of Work

Exhibit 1 to Attachment A – ChargePoint Assure Terms and Conditions of Service

Exhibit 2 to Attachment A – ChargePoint Master Services and Subscription Agreement

Attachment B – Contractor Pricing

Attachment C – Staffing Plan

**RECITALS**

WHEREAS, Contractor and County are entering into this Contract for Network EVCS, Service and Maintenance under a firm-fixed fee Contract; and,

WHEREAS, County solicited Contract for Network EVCS, Service and Maintenance as set forth herein, and Contractor represented that it is qualified to provide Network EVCS, Service and Maintenance to the County as further set forth here; and,

WHEREAS, Contractor agrees to provide Network EVCS Service, and Maintenance to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and,

WHEREAS, County agrees to pay Contractor based on the schedule of hourly rates set forth in Payment/Compensation, attached hereto as Attachment B; and,

WHEREAS, the County Board of Supervisors has authorized the Procurement Officer or designee to enter into a Contract for Network EVCS Service, and Maintenance with the Contractor; and,

NOW, THEREFORE, the Parties mutually agree as follows:

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**ARTICLES****General Terms and Conditions:**

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. **Entire Contract:** This Contract contains the entire Contract between the Parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Procurement Officer or designee.
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. **Delivery:** Time of delivery of goods and services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.
- F. **Acceptance Payment:** Unless otherwise agreed to in writing by County; 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are, pursuant to Contractor's applicable warranty 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in **article "Z"** below, and as more fully described in **article "Z,"** harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County, for third party claims, by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders,

- or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in **Article "Z"** below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.
- I. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. **Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

- O. **Insurance Requirements:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

### **Qualified Insurer**

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence
Network Security & Privacy Liability (Required if Contactor retains credit card data)	\$1,000,000 per claims-made

**Required Coverage Forms**

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

**Required Endorsements**

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad including the *County of Orange its elected and appointed officials, officers, agents and employees* as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT.**
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance (Required if credit card data is retained):

- 1) An Additional Insured endorsement naming the *County of Orange, its elected and appointed officials, officers, agents and employees* as Additional Insureds for its vicarious liability.
- 2) A primary and non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, agents and employees* or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT.**

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

If Contractor's Network Security & Privacy is a "Claims-Made" policy, Contractor shall agree to maintain coverage for two (2) years following the completion of the Contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Procurement or the agency/department procurement division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

Q. **Change of Ownership/Name, Litigation Status, Conflicts with County Interests:**

Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract, and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor

and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

- R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- T. **Compliance with Laws:** Contractor represents and warrants that all goods and services Contractor provides under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of **Article "Z"** below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. **Freight:** Prior to the County's express acceptance of delivery of products. Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each Party shall bear their own attorney's fees, costs and expenses.
- X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against

the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

- Y. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any third party claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage (collectively "Claims"), arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence or willful misconduct of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- AA. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing company hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection. Any such audit shall be limited to once a calendar year, unless otherwise required by law.
- The County reserves the right to audit and verify the Contractor's records before final payment is made.
- Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.
- Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the County's project manager.
- BB. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of



funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

- CC. **Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

## Amendment No. 1

- DD. **Levine Act Requirements:** Contractor agrees to comply with Government Code Section 84308. Contractor further agrees to disclose to the County any contribution made to any members of the Board of Supervisors or County Agency Officers by Contractor, Contractor's agent or lobbyist, or, if applicable, any subcontractor(s) for the twelve (12) months prior to and twelve (12) months following the approval, renewal, or extension of this Contract.

**Additional Terms and Conditions:**

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure from the goods and services from Contractor detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".

## Amendment No. 1

2. **Term of Contract:** ~~The initial term of this Contract shall be effective upon execution of all authorized signatures or upon Board of Supervisors approval, whichever occurs later, and shall be effective for five (5) years from that date, unless otherwise terminated by County.~~

The initial term of this Contract shall be effective upon execution of all authorized signatures or upon Board of Supervisors approval, whichever occurs later, and shall be effective for eight (8) years from that date, unless otherwise terminated by County.

3. **Adjustments – Scope of Work:** No adjustments made to the Scope of Work will be authorized without prior written approval of the County.
4. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- a) Terminate the Contract immediately, pursuant to Section K herein;
  - b) Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
  - c) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
  - d) Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

5. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the

Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.

6. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.
7. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
8. **Contractor’s Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.

The Contractor’s Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager from providing services to the County under this Contract. The County’s Project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within five (5) business days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor’s Project Manager from providing further services under the Contract.

9. **Contractor Personnel – Reference Checks:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor’s employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.
10. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
11. **Cooperative Agreement:** The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use this Contract will be responsible for issuing their own purchase documents/Contracts, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any

Contract entered into with another department or entity that is entered into as an extension of this Contract a Contract clause that will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this contract. Failure to do so will be considered a material breach of this Contract and grounds for immediate Contract termination. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. The Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this Contract.

The Contractor shall be required to maintain a list of the cooperative entities using this Contract. The list shall report dollar volumes spent annually and shall be provided on an annual basis to the County, at the County's request.

12. **County of Orange Child Support Enforcement:** All Contractors are required to comply with the child support enforcement requirements of the County of Orange. Failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. In order to comply with the child support enforcement requirements of the County of Orange, all bidders/proposers must furnish to the Contract administrator, the Procurement Officer, or the agency/department Deputy Purchasing Agent:
- A. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address;
  - B. In the case of a Contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the Contracting entity;
  - C. A certification that the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
  - D. A certification that the Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

13. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract. Such data shall include what is required in Attachment A, Scope of Work, Section VIII, but shall exclude the data that is received by the County through use of the cloud service subscription.
14. **Default – Reprocurement Costs:** In case of Contract breach by Contractor, resulting in termination by the County, the County may procure the goods and/or services from other sources. If the cost for those goods and/or services is higher than under the terms of the existing Contract, Contractor will be responsible for paying the County the difference between the Contract cost and the price paid, and the County may deduct this cost from any unpaid balance due the Contractor. The price paid by the County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.

15. **Disputes – Contract:**

- A. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, as specified in Article 21. "Notices," such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:
1. The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
  2. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.
- B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for cause or termination for convenience as stated in section K herein.

16. **Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

- A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
- B. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
1. The dangers of drug abuse in the workplace;
  2. The organization's policy of maintaining a drug-free workplace;
  3. Any available counseling, rehabilitation and employee assistance programs; and
  4. Penalties that may be imposed upon employees for drug abuse violations.
- C. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:

1. Will receive a copy of the company's drug-free policy statement; and
2. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

- A. The Contractor has made false certification, or
- B. The Contractor violates the certification by failing to carry out the requirements as noted above.

17. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, sub article B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as "an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at [http://www.edd.ca.gov/Employer\\_Services.htm](http://www.edd.ca.gov/Employer_Services.htm)

18. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as project manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
19. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not

discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

- 20. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County’s Project Manager.
- 21. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties’ project managers’ routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

Amendment No. 1

~~Contractor: ChargePoint, Inc.~~  
~~Attn: Brendan O’Donnell~~  
~~240 East Hacienda Avenue~~  
~~Campbell, CA 95008~~  
~~Phone: 408 841 4500~~  
~~Email: [Brendan.Odonnell@chargepoint.com](mailto:Brendan.Odonnell@chargepoint.com)~~

~~County’s Project Manager: OC Public Works/Procurement Services~~  
~~Attn: Laura Alegria~~  
~~300 North Flower Street~~  
~~Santa Ana, CA 92703~~  
~~Phone: 714 667 9622~~  
~~Email: [Laura.Alegria@ocpw.oegov.com](mailto:Laura.Alegria@ocpw.oegov.com)~~

~~cc: OC Public Works/Procurement Services  
Attn: Carlos Corona, County DPA  
300 North Flower Street, Suite 861  
Santa Ana, CA 92703  
Phone: 714-667-9694  
Email: [Carlos.Corona@ocpw.ocgov.com](mailto:Carlos.Corona@ocpw.ocgov.com)~~

Contractor: ChargePoint, Inc.  
Attn: Brendan O'Donnell  
240 East Hacienda Avenue  
Campbell, CA 95008  
Phone: 408-841-4500  
Email: [Brendan.Odonnell@chargepoint.com](mailto:Brendan.Odonnell@chargepoint.com)

County's Project Manager: OC Public Works/Procurement Services  
Attn: Stacy Mohler  
601 N. Ross St.  
Santa Ana, CA 92701  
Phone: 714-667-9622  
Email: [Stacy.Mohler@ocpw.ocgov.com](mailto:Stacy.Mohler@ocpw.ocgov.com)

cc: OC Public Works/Procurement Services  
Attn: Richard Nguyen, County DPA  
601 N. Ross St.  
Santa Ana, CA 92701  
Phone: 714-667-9633  
Email: [Richard.Nguyen@ocpw.ocgov.com](mailto:Richard.Nguyen@ocpw.ocgov.com)

22. **Parking for Delivery Services:** The County of Orange will not provide free parking for delivery services.
23. **Precedence:** The Contract documents consist of this Contract and its Exhibits and Attachments as specified above. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the Recitals and Articles of this Contract, and then the Attachments and then the Exhibits, i.e., Exhibit 1 to Attachment A – ChargePoint Assure Terms and Conditions of Service, and Exhibit 2 to Attachment A – ChargePoint Master Services and Subscription Agreement.
24. **Project Manager: County:** The County shall appoint a project manager to act as liaison between the County and the Contractor during the term of this Contract. The County's project manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's project manager shall have the right to require the removal and replacement of the Contractor's project manager and key personnel. The County's project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice from the County's project manager. The County's project manager shall review and approve the appointment of the replacement for the Contractor's project manager and key personnel. Said approval shall not be unreasonably withheld. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

25. **Software – Documentation:** The Contractor agrees to provide to the County the County-designated number of all manuals and other associated printed materials and updated versions thereof, which are necessary or useful to the County in its use of the equipment or software provided

hereunder. The County will designate the number of copies for production use and the number of copies for disaster recovery purposes and will provide this information to the Contractor.

If additional copies of such documentation are required, the Contractor will provide such manuals at the request of the County. The requesting agency/department shall be billed for the manuals and any associated costs thereto by invoice. The Contractor agrees to provide such additional manuals at prices not in excess of charges made by the Contractor to its best customers for similar publications.

The Contractor further agrees that the County may reproduce such manuals for its own use in maintaining the equipment or software provided hereunder. The County agrees to include the Contractor's copyright notice on any such documentation reproduced in accordance with copyright instructions to be provided by the Contractor.

26. **Software – Future Releases:** If improvement, upgraded, or enhancement versions of any software product under this Contract are developed by the Contractor and are made available to other licensees, they will be made available to the County at the County's option, provided such versions are operable on the same computer hardware configuration. The charge for such upgrading to the later version of the software will be the difference between the price established by the Contractor for the later version and the price specified herein or the then prevailing prices of the currently installed version.
27. **Software License:** The Contractor hereby grants to the County of Orange and the County accepts from the Contractor, subject to the terms and conditions of this Contract, a non-exclusive, non-transferable license to use the software products list in this agreement, hereinafter referred to as "software products". The license granted above authorizes the County to use the software products in machine-readable form on a single computer system, designed in writing by the County to the Contractor, provided that if the designated CPU is inoperative due to malfunction, license herein granted shall be temporarily extended to authorize the County to use the software products in machine-readable form on any other County CPU until the designated CPU is returned to operation. By prior written notice to the Contractor the County may redesignate the CPU in which the software products are to be used and must do so if the redesignation is permanent.
28. **Software - Maintenance:** Note: This T and C is applicable to software products with renewable or perpetual licenses where software maintenance is required by the County.

The correction of any residual errors in any software products which may be discovered by the Contractor or by the County will be considered maintenance. Such maintenance will be performed by the Contractor without additional charge for the duration of this Contract. Suspected errors discovered by the County in the software products will be handled by the following procedure:

- A. A listing of the output and a copy of the evidential input data in machine-readable format will be submitted to the Contractor along with a completed copy of the appropriate Contractor information form and, if appropriate, a listing of the contents of the memory of the CPU at the time the error was noted.
- B. Errors in the software product as verified by the Contractor will be corrected by providing a new copy of said software product or a new copy of the affected portions in machine-readable format.

The Contractor will be available to assist the County in isolating and correcting error conditions caused by the County's particular hardware or operating system at rates specified in this Contract. If the Contractor is called upon by the state to correct an error caused by the County's negligence, modification by the County, County-supplied data, or machine or operator failure or due to any



other cause not inherent in the original software products, the Contractor reserves the right to charge the County for such service on a time and material basis at rates in accordance with the Contract.

29. **Software - Protection:** The County agrees that all material appropriately marked or identified as proprietary, whether oral or written, and furnished hereunder are provided for County's exclusive use for the purposes of this agreement only and will be held in confidence. All proprietary data shall remain the property of the Contractor. County agrees to take all reasonable steps to ensure that such data are not disclosed to others without prior written consent of the Contractor. The County will ensure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.

The County agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed programs and/or optional materials to satisfy its obligations under this agreement with respect to use, copying, modification and protection and security of licensed programs and optional materials.

30. **Compliance with County Information Technology Policies and Procedures:**

#### **Policies and Procedures**

Contractor, its subcontractors, the Contractor personnel, and all other agents and representatives of Contractor, will at all times comply with and abide by all Information Technology (IT) policies and procedures of the County that are provided or made available to Contractor that reasonably pertain to Contractor (and of which Contractor has been provided with advance notice) in connection with Contractor's performance under this Contract. Contractor shall cooperate with the County in ensuring Contractor's compliance with the IT policies and procedures described in this Contract and as adopted by the County from time-to-time, and any material violations or disregard of such IT policies or procedures shall, in addition to all other available rights and remedies of the County, be cause for termination of this Contract. In addition to the foregoing, Contractor shall comply with the following:

#### **Security and Policies**

All performance under this Contract, shall be in accordance with the County's security requirements, policies, and procedures as set forth above and as modified, supplemented, or replaced by the County from time to time, in its sole discretion, by providing Contractor with a written copy of such revised requirements, policies, or procedures reasonably in advance of the date that they are to be implemented and effective (collectively, the "Security Policies"), provided that Contractor has been separately provided with these policies and has confirmed written acceptance of such. Contractor shall at all times use industry best practices and methods with regard to the prevention, detection, and elimination, by all appropriate means, of fraud, abuse, and other inappropriate or unauthorized access to County systems accessed in the performance of services in this Contract.

#### **Information Access**

The County may require all Contractor personnel performing services under this Contract to execute a confidentiality and non-disclosure Contract concerning access protection and data security in the form provided by County. The County shall authorize, and Contractor shall issue, any necessary information-access mechanisms, including access IDs and passwords, and in no event shall Contractor permit any such mechanisms to be shared or used by other than the individual Contractor personnel to whom issued. Contractor shall provide each Contractor Person with only such level of access as is required for such individual to perform his or her assigned tasks and functions. All County systems, and all data and software contained therein, including County data, County hardware and County software, used or accessed by Contractor: (a) shall be used and

accessed by such Contractor solely and exclusively in the performance of their assigned duties in connection with, and in furtherance of, the performance of Contractor's obligations hereunder; and (b) shall not be used or accessed except as expressly permitted hereunder, or commercially exploited in any manner whatsoever, by Contractor, at any time.

### **Enhanced Security Procedures**

The County may, in its discretion, designate certain areas, facilities, or systems as requiring a higher level of security and access control. The County shall notify Contractor in writing reasonably in advance of any such designation becoming effective. Any such notice shall set forth in reasonable detail the enhanced security or access-control procedures, measures, or requirements that Contractor shall be required to implement and enforce, as well as the date on which such procedures and measures shall take effect. Contractor shall fully comply with and abide by all such enhanced security and access measures and procedures as of such date.

### **Breach of Security**

Any breach or violation by Contractor of any of the foregoing shall be deemed a material breach of a material obligation of Contractor under this Contract and may be deemed an incurable and material breach of a material obligation of Contractor under this Contract resulting in termination.

### **Conduct on County Premises**

Contractor shall, at all times, comply with and abide by all reasonable policies and procedures of the County (or that may be established thereby, from time to time) that pertain to conduct on the County's premises, possession or distribution of contraband, or the access to, and security of, the Party's real property or facilities, to the extent that the Contractor has been provided with a copy of each such policy or procedure. Contractor shall exercise due care and diligence to prevent any injury to persons or damage to property while on the other Party's premises. The operation of vehicles by either Party's personnel on the other Party's property shall conform to posted and other applicable regulations and safe-driving practices. Vehicular accidents occurring on a Party's property and involving either Party's personnel shall be reported promptly to the appropriate Party's personnel. Each Party covenants that at all times during the Term, it, and its employees, agents, and Subcontractors shall comply with, and take no action that results in the other Party being in violation of, any applicable federal, state, and local laws, ordinances, regulations, and rules. Each Party's personnel shall clearly identify themselves as the appropriate Party's personnel and not as employees of the other Party. When on the other Party's premises, each Party's personnel shall wear and clearly display identification badges or tags, as approved by the other Party.

### **Security Audits**

Each Contract Year, County may perform or have performed security reviews and testing based on an IT infrastructure review plan. Such testing shall ensure all pertinent County security standards as well as any customer agency requirements, such as federal tax requirements or HIPPA.

31. **Subcontracting:** With the exception of warranty repair and maintenance, no performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

In the event that the Contractor is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor, and shall incorporate by reference the terms of this Contract. The County shall look to the Contractor for

- performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange, and shall be performed in compliance with all applicable laws
32. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.
  33. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.
  34. **Usage Reports:** The Contractor shall submit usage reports on an annual basis to the assigned Deputy Purchasing Agent of the County of Orange user agency/department. The usage report shall be in a format specified by the user agency/department and shall be submitted 90 days prior to the expiration date of the contract term, or any subsequent renewal term, if applicable.
  35. **Wage Rates:** Contractor shall post a copy of the wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of Industrial Relations. These rates are on file with the Clerk of the Board of Supervisors. Copies may be obtained at cost at the office of County's OC Public Works/OC Facilities & Asset Management/A&E Project Management or visit the website of the Department of Industrial Relations, Prevailing Wage Unit at [www.dir.ca.gov/DLSR/PWD](http://www.dir.ca.gov/DLSR/PWD). The Contractor shall comply with the provisions of Sections 1774, 1775, 1776 and 1813 of the Labor Code.
  36. **Wage Rate Penalty:** Pursuant to the provisions of Section 1775 of the Labor Code, the Contractor shall forfeit to the County, as a penalty, the sum of Fifty Dollars (\$50) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this Contract, by him or by any subcontractor under him, in violation of the provisions of this Contract.
  37. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide, in summary:

- 1.1.1. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.

- 1.1.2. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
  - (a) The information contained in the payroll record is true and correct.
  - (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
- 1.1.3. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
- 1.1.4. Contractor shall inform County of the location of the payroll records, including the street address, city and county, and shall, within five working days, provide a notice of any change of location and address of the records.
- 1.1.5. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have 10 days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit \$100, or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.


Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at [www.dir.ca.gov](http://www.dir.ca.gov). If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.


**Signature Page follows**

Signature Page

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the date following their respective signatures.

**CHARGEPOINT, INC.\***


<small>DocuSigned by:</small>			
	Jonathan Kaplan	Vice President	8/1/2019
<small>Signature</small>	<small>Name</small>	<small>Title</small>	<small>Date</small>

<small>DocuSigned by:</small>			
	Rex S. Jackson	Chief Financial Officer	8/1/2019
<small>Signature</small>	<small>Name</small>	<small>Title</small>	<small>Date</small>

COUNTY OF ORANGE, A political subdivision of the State of California  
COUNTY AUTHORIZED SIGNATURE:

	Nicole Swain	Procurement Manager	8.27.2019
<small>Signature</small>	<small>Name</small>	<small>Title</small>	<small>Date</small>

APPROVED AS TO FORM:  
County Counsel

<small>DocuSigned by:</small>	
By 	Mark Sanchez
<small>Signature</small>	<small>Name</small>

Date 8/1/2019

\* If the contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signee to bind the corporation.

**ATTACHMENT A  
SCOPE OF WORK**

**I. OVERVIEW**

The County of Orange operates thirteen (13) parking facilities with over eight thousand (8,000) spaces.

**II. PROJECT DESCRIPTION**

A. Under this Contract, Contractor agrees to do perform/provide the following goods/services:

1. Provide electric vehicle charging station (“EVCS”) equipment to the County at the prices set forth in this Contract
2. Supervise the installation by County Job Order contractors or personnel, or provide a “site validation”, as ordered by the County, of EVCSs at County parking facilities.
3. Provide maintenance, repair and other services (product name “ChargePoint Assure”) to County EVCSs identified by County.
4. Provide ChargePoint cloud network services (“Network Services”) subscriptions for specified County EVCSs, which shall include charge monitoring, reporting services, billing, cellular network compatibility, and related software/technology.
5. Provide guaranteed pricing to the County for ChargePoint Assure, Network Services, and ChargePoint EVCS equipment throughout the Term of this Contract.

B. Upon execution of this Contract, and as an initial order under this Contract, Contractor shall supply network DC Fast EVCS and network Level 2 dual port EVCS to County upon work request from County Project Manager, and shall supervise their installation by County JOCs at the locations, per Section III below. Contractor shall also supply ChargePoint Assure and Network Services for those installed EVCS.

**III. LOCATIONS / EQUIPMENT**

**Amendment No. 1**

Contractor shall provide ~~up to forty three (43)~~ EVCSs of its own brand, supervise their installation by County JOCs, and shall provide ChargePoint Assure and Network Services (collectively, “Services”), at the locations identified by County via work request and at prices set forth in Attachment B. Such prices shall be guaranteed throughout the Term of the Contract.

**CONTRACTOR RESPONSIBILITIES**

**Contractor Shall:**

- A. Supervise the installation of all EVCSs purchased under this Contract, including the electric vehicle supply equipment provided by the County’s Job Order Contractor (“JOC”) or County personnel, or perform a site validation if such EVCSs are installed without Contractor’s supervision, at the prices set forth in Attachment B. . Included in this cost, Contractor will activate and test the EVCS if necessary to provide ChargePoint Assure or Network Services.

- B. Provide ChargePoint Assure services for EVCs identified by the County in accordance with the terms set forth in the attached Exhibit 1 – ChargePoint Assure Terms and Conditions of Service, as modified by the Parties, and at the prices set forth in Attachment B.
- C. Provide Network Services in accordance with the attached Exhibit 2 – Master Services and Subscription Agreement (“MSSA”), as modified by the Parties, and at the prices set.
- D. Provide customizable detail reports.
- E. Provide flexible payment options that allow for universal public access.
- F. The Contractor shall furnish the EVCS equipment to the County, at an agreed upon location as directed by the County Project Manager and shall supervise the installation of all EVCSs. If the County purchases additional EVCS equipment, the Contractor shall supervise the installation of those units as well.

#### **IV. EVCS AND SERVICES SPECIFICATIONS**

**EVCS and services provided by Contractor under this Contract shall meet the following specifications:**

- A. Be compliant with National Electrical Code and Federal Communications Commission (FCC) regulations for safety and operation requirements.
- B. Be approved by a Nationally Recognized Testing Laboratory (NRTL) program that is accredited to certify EVSE standards.
- C. Be compliant with the Americans with Disabilities Act (ADA).
- D. Charge connector shall be dual standard with both Combined Charging Stations (CCS) and charge de move (CHAdeMO) connectors with self-retractable cable.
- E. Be fully networked to allow for the management of charging operations including access, pricing, power distribution, and charging notifications.
- F. Be accessible to all members of the public, with no membership to a specific network required for access.
- G. Be capable of accepting and processing point of sale transaction payments of all major credit cards and ATM cards through a secure system. Station location and real-time availability should be available to users on the web through sites such as plugshare.com and the Alternative Fuels Data Center.
- H. Have a screen display that is user-friendly and easy to operate. Displays shall be LCD, LED or equivalent, and shall be readable in direct sunlight and at night.
- I. Have a Security design that is both tamper-proof and vandalism-proof, such as tamper-resistant screws, anti-vandalism hardware, locked enclosures, and graffiti-resistant coating.
- J. Capability for measurement and data capture of real-time statistics and energy use.
- K. Available 24/7 customer support for drivers.

**V. MAINTENANCE OF EQUIPMENT**

Contractor shall maintain EVCSs in accordance with ChargePoint Assure plans ordered by County, and pursuant to the terms of Exhibit 1 attached hereto, for the Term of the Contract.

**VI. COMMUNICATIONS**

Contractor shall provide maintenance services for a period of five (5) years to ensure all equipment is properly checked, tested, and activated for proper operation on a monthly basis or as requested by the County. Project Manager Report to be submitted with monthly invoice. Provide a network communications system with a service provider capable of monitoring the EVCS for any error or malfunction 24 hours a day, seven days a week. Maintenance of the EVCS should be performed by local service providers who have the capability and capacity to respond to calls for maintenance/service in the following manner and time frame:

- A. The service provider shall be notified of the malfunction and immediately notify the County Project Manager and/or its staff of such malfunction or operating error within one-hour.
- B. In the event of an equipment or hardware malfunction or failure, a maintenance crew shall respond to the site within four (4) hours from the time the issue is reported.

**VI. SERVICE PROVIDER(S)/DATA CAPTURE**

The EVCSs must have capabilities to handle, transfer, and backup data. The network communications shall, at a minimum, provide the following information for each charging transaction, at each charging location, and must comply with all state and federal regulations:

- A. Charging data such as date and time of usage (start and stop time) and utilization rates
- B. Total kWh and Total kW draw
- C. Total dollar amount charged to the user
- D. Station status and health in real time
- E. Malfunction or operating error

**VII. NETWORK AND CLOUD SERVICES**

- A. EVCS shall be networked for remote management.
- B. EVCS must connect to the network via cellular network using carriers AT&T, Verizon, or Sprint using at the minimum 4G, 5G, or LTE technology.
- C. EVCS shall connect locally so that not all EVCS require a cellular modem.
- D. EVCS and Network shall be PCI (Payment Card Industry) compliant.
- E. EVCS shall have the ability to notify driver when charging is complete or if a charging session has been disrupted.



- F. EVCS shall have the ability to limit access to each station, including the ability to limit by type of driver (employees, fleet vehicles, etc.) and vary this access by time of day and day of week.
- G. EVCS shall collect revenue from the driver and support multiple payment options.
- H. EVCS shall have flexible pricing options, including by hour or by minute, by kwh, by session (flat fee), and ability to increase the fee based on a time limit or the vehicle reaching full charge. Contractor shall have the ability to vary the price for the EVCS by time of day or day of week.
- I. EVCS shall provide free charging to select vehicles/drivers (e.g. free charging for fleet vehicles, separate from employee or public pricing).

**VIII. DATA COLLECTION AND REPORTING**

- A. The following information for each charging event (session) will be collected and available via secure web interface, and available for download/export to Excel/CSV:
  - 1. Time Stamp (time zone local to EVSE)
  - 2. Unique ID for Charging Event
  - 3. Unique ID for EVSE
  - 4. EVSE Name
  - 5. EVSE Address
  - 6. Port Number (if dual port EVSE)
  - 7. Port Type (L1, L2, DC)
  - 8. Charging Event Duration (connect time)
  - 9. Active Charging Time
  - 10. Energy (kWh)
  - 11. Session fee (if any)
  - 12. Unique, non-personally identifiable ID for Driver
- B. Contractor report will:
  - 1. Reflect number of sessions by time, viewable by sessions per day, per week, or per month and exportable to Excel/CSV.
  - 2. Show total energy (kWh), viewable by energy per day, per week, or per month and exportable to Excel/CSV.
  - 3. Show total energy (kWh) by object (individual EVCS, pre-generated group or custom group of EVCS, all EVCS), customizable by date range.

4. Show number of unique drivers by time, viewable per day, per week, or per month and exportable to Excel/CSV.
5. Show station utilization (hours per day), configurable by hours of the day (e.g. 8am to 5pm), weekday vs weekend (or both), and by port type (L1, L2, DC).
6. Show revenue over time, viewable by day, by week, or by month and exportable to Excel/CSV.

**IX. PRODUCT SAFETY**

The EVCS shall have the ability to stop flow of power when not in use. The system shall have over-current protection to prevent vehicles from drawing too much power.

**X. WARRANTY**

Exhibit 1 and 2 notwithstanding, Contractor shall provide a manufacturer's warranty on all purchased EVCS equipment, hardware, and software for a minimum of one-year from the date of acceptance by the County. The warranty must include all materials, equipment, parts, tools, labor and incidentals, as well as all Contractor - or manufacturer-recommended upgrades. Warranty shall cover complete repairs or replacements, and site visits, as necessary. If there is a failure of the EVCS during the warranty period, the hardware provider agrees to replace such components or parts within 72 hours of notification.

**EXHIBIT 1 TO ATTACHMENT A  
CHARGEPOINT ASSURE TERMS AND CONDITIONS OF SERVICE**

## CHARGEPOINT ASSURE TERMS AND CONDITIONS OF SERVICE

Welcome to ChargePoint Assure. ChargePoint Assure is a full service maintenance and support program designed specifically for ChargePoint customers.

1. **WHAT IS COVERED:** With ChargePoint Assure, ChargePoint agrees to do each of the following:
  - a. Ensure that all parts are provided and labor is performed, on-site if necessary, to correct any defect in the materials or workmanship of electric vehicle charging stations purchased from ChargePoint, Inc., or its representatives ("Charging Stations") in a prompt and professional manner.
  - b. Provide remote, automated monitoring of your Charging Stations.
  - c. Perform triage with respect to any Charging Station that may be defective.
  - d. Coordinate all repairs necessary to have your Charging Station back up and running.
  - e. Ensure that you are provided response no later than one business day from the date ChargePoint becomes aware of an issue.
  - f. Begin onsite repairs within one business day from the delivery of any parts required to fix your Charging Station.
  - g. ChargePoint will provide software moves, adds and changes at no additional cost
  - h. ChargePoint guarantees a 98% annual station uptime with a prorated refund of up to the annual station Assure maintenance fee for outages caused by station hardware or software failures in excess of 2% annually
  - i. ChargePoint will provide standard monthly summary and quarterly detailed station usage and performance metrics.
  - j. ChargePoint will cover the labor portion of non-cosmetic station repairs caused by vandalism, auto accidents or excessive wear and tear.
2. **WHAT IS NOT COVERED:** ChargePoint undertakes no responsibility with respect to repairing, replacing, monitoring or servicing anything other than your Charging Stations. This means, for example, that ChargePoint is not responsible for the physical mounting and electrical wiring of your Charging Stations or for the performance of any cellular or Wi-Fi repeaters or other devices installed in connection with your Charging Stations.
3. **CUSTOMER RESPONSIBILITIES:** In order to perform its obligations under ChargePoint Assure, ChargePoint needs your cooperation. Specifically, you agree to:
  - a. Provide reasonable access to ChargePoint or its designee as necessary for the performance of ChargePoint's obligations.
  - b. Permit ChargePoint to access the Charging Stations remotely by maintaining a separately purchased Cloud Services subscription necessary for remote access.
  - c. Maintain your premises in accordance with all applicable laws, rules and regulations.
  - d. Keep the areas in which Charging Stations are located in a clean, safe and orderly condition, to at least the same standard as you customarily use to maintain the remainder of your premises.
  - e. Promptly notify ChargePoint of any suspected defect with a Charging Station.
4. **WHO IS ELIGIBLE FOR CHARGEPOINT ASSURE?:** ChargePoint Assure is only available to purchasers of Charging Stations who purchase ChargePoint Assure and either: 1) use a ChargePoint

Operations and Maintenance Partner (“O&M Partner”) to install their Charging Stations or 2) successfully complete a site validation as described below.

a. **ChargePoint O&M Partner Installation.** For information on how to contact a ChargePoint O&M Partner, please contact your ChargePoint sales representative or authorized ChargePoint reseller for more details.

b. **Site Validation:** If you do not use an O&M Partner to install your Charging Station, you still will be eligible for ChargePoint Assure after your installation has been validated by ChargePoint or an authorized third party. The purpose of the site validation is to ensure that your Charging Stations were installed correctly, in accordance with ChargePoint’s recommended specifications and operational requirements. Site validations require the payment of ChargePoint’s then current fee, charged on a “per site” basis. For these purposes, a “site” is defined as any group of Charging Stations whose circuits are terminated at the same power panel.

5. **EXCLUSIONS FROM COVERAGE:** ChargePoint’s obligations under ChargePoint Assure shall not apply to defects or service repairs resulting from the following:

- a. Cosmetic damage such as scratches and dents.
- b. Normal aging.
- c. Except as provided in 1(j) above, abuse, vandalism, damage or other problems caused by accidents or negligence (including but not limited to physical damage from being struck by a vehicle), or use of the Charging Station in a way other than as specified in the applicable Charge Point documentation.
- d. Installation, alteration, modification or relocation of the Charging Station that was not approved in writing by ChargePoint, performed by an O&M Partner or validated in the manner described above.
- e. Use of the Charging Station with software, interfacing, parts or supplies not supplied by ChargePoint.
- f. Damage as a result of extreme power surge, extreme electromagnetic field or any other acts of nature.

In addition ChargePoint’s obligations under ChargePoint Assure shall not apply to any Charging Station that was not installed by a ChargePoint O&M Partner or a ChargePoint certified installer pursuant to the provisions of Section 4 of these Terms and Conditions.

6. **CONTACT INFORMATION:** If at any time during the term of your coverage of ChargePoint Assure you believe you have a defective Charging Station, contact Customer Service at 1-877-850-4562 or [support@chargepoint.com](mailto:support@chargepoint.com).

7. **SERVICE TERM:** If you comply with the installation requirements described in Section 4, and purchase ChargePoint Assure, you will receive, ChargePoint Assure coverage that will replace your standard ChargePoint Warranty and will last for the remainder of the standard Warranty period, if any. You may purchase extensions to your ChargePoint Assure coverage. The extension period will begin on the date your standard Exchange Warranty expires or, if applicable, the date that any extensions to ChargePoint Assure coverage that you have previously purchased expire. Please contact your ChargePoint sales representative or authorized ChargePoint reseller for more details.

8. **PAYMENTS:** Payment shall be made pursuant to the Master Services and Subscription Agreement entered into between the parties

9. **TRANSFERS:** Your ChargePoint Assure coverage applies only to the Charging Stations and installation site for which it was purchased. If you sell or otherwise transfer your Charging Stations, your ChargePoint Assure coverage may not be transferred without ChargePoint’s prior written

consent.

10. **REPLACEMENT PARTS AND STATIONS:** Replacement parts or charging stations provided by ChargePoint under ChargePoint Assure may be remanufactured or reconditioned parts or Charging Stations or, if the exact Charging Station is no longer manufactured by ChargePoint, a Charging Station with substantially similar functionality. All replaced parts and Charging Stations, whether under warranty or not, become the property of ChargePoint. Any replacement parts or Charging Stations so furnished will be covered by ChargePoint Assure for the remainder of your ChargePoint Assure coverage or ninety (90) days from the date of delivery of such replacement parts or Charging Stations, whichever is later.
11. **LIMITS ON LIABILITY:** This section limits ChargePoint's liability under ChargePoint Assure. Please read it carefully.  
Intentionally Deleted.
12. **AMENDMENT OR MODIFICATION:** These ChargePoint Assure Terms and Conditions of Service may not be amended or modified except pursuant to a writing executed by each of the parties.
13. **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.
14. **FORCE MAJEURE:** ChargePoint will not be liable for failure to perform any of its obligations hereunder due to causes beyond its reasonable control and occurring without its fault or negligence, including but not limited to fire, flood, earthquake or other natural disaster (irrespective of ChargePoint'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 ChargePoint 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.
15. **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.

**EXHIBIT 2 TO ATTACHMENT A  
CHARGEPOINT MASTER SERVICES AND SUBSCRIPTION AGREEMENT**

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## CHARGEPOINT® MASTER SERVICES AND SUBSCRIPTION AGREEMENT

**IMPORTANT: THIS MASTER SERVICES AND SUBSCRIPTION 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 DO NOT AGREE WITH ANY OF THESE TERMS AND CONDITIONS, DO NOT USE ANY CHARGEPOINT SERVICES.**

**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 CPI [Privacy Policy](#), as amended from time to time, and the following Exhibits, which are made a part of, 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 Cloud 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, warranties and Cloud Plans on ChargePoint

**2.18** “*Rights*” means the rights, authorizations, privileges, actions, information and settings within the ChargePoint Services which a Rights Grantor grants to an Rights Grantee, to enable such Rights Grantee 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 Rights Grantor in connection with one or more of the Rights Grantor’s Charging Stations. A Rights Grantor 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** “*Cloud 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 Cloud Plan that is used by CPI in connection with enabling Services and/or provisioning Charging Stations.

**2.25** “*User*” means any person using a Charging Station.

**3. AVAILABLE CHARGEPOINT SERVICES & CLOUD PLANS.** A description of the various ChargePoint Services and Cloud Plans currently available for subscription is located on the CPI website. CPI may make other ChargePoint Services and/or Cloud Plans available from time to time, and may amend the features or benefits offered with respect to any ChargePoint Service or Cloud Plan at any time and from time to time. Subscription Fees are based on Subscriber’s choice of Cloud 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 and acknowledges that it is responsible for the security of "cardholder data" (as that term is defined for purposes of the Payment Card Industry – Data Security Standards), if any, that CPI possesses, otherwise stores, processes or transmits on behalf of Subscriber or for any impact, if any, on the security of Subscriber's cardholder data environment.

**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. SUBSCRIPTION FEES AND PAYMENT TERMS.**

**6.1 SUBSCRIPTION FEES.** Subscriber shall pay all Subscription Fees within thirty (30) days of its receipt of CPI's invoice, in the format specified in this Contract. All payments shall be made in U.S. Dollars by check, wire transfer, ACH payment system or other means approved by CPI. Customer may not offset any amounts due to CPI hereunder against amounts due to Customer under this Contract. Subscription fees payable to CPI do not include any Taxes imposed thereon, and Subscriber is responsible for any and all such Taxes. All such Taxes shall be set forth on the invoice provided by CPI to Subscriber; provided that, CPI's failure to include any such Tax on an invoice shall not relieve Subscriber's liability therefor. Except as otherwise set forth in this Contract, all payment obligations under this Contract are non-cancelable and non-refundable.

**6.2 LATE PAYMENTS.** Late payments shall be subject to a charge equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate permitted by law. Subscriber will reimburse CPI for expenses reasonably incurred by CPI in the collection of any late payments. Payment will be net 30 days from receipt of an invoice in the format specified in this Contract including the Subscribers routine processing requirements to verify and approve payment. If any amount owing by Subscriber under this Agreement is more than thirty (30) days overdue, CPI may, without otherwise limiting CPI's rights or remedies, (a) terminate this Contract, (b) suspend the use by Subscriber of the ChargePoint Services until such amounts are paid in full, and/or (c) condition future ChargePoint Service renewals and other Subscriber purchases on payment terms other than those set forth herein; provided that CPI shall not exercise any such rights if Subscriber has reasonably disputed such charges and is cooperating diligently in good faith to resolve the dispute.

## **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 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 Rights Grantees 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 Cloud 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.

## **8. LIMITATIONS OF LIABILITY.**

**8.1 DISCLAIMER OF WARRANTIES.** CHARGEPOINT AND THE CHARGEPOINT SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE” FOR SUBSCRIBER’S USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. ALL CONTENT OBTAINED THROUGH THE CHARGEPOINT SERVICES IS OBTAINED AT SUBSCRIBER’S OWN DISCRETION AND RISK, AND SUBSCRIBER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO SUBSCRIBER’S COMPUTER SYSTEM OR OTHER DEVICE, LOSS OF DATA, OR ANY OTHER DAMAGE OR INJURY THAT RESULTS FROM THE DOWNLOAD OR USE OF ANY SUCH CONTENT.

**8.2 EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES.** REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL CPI BE LIABLE FOR ANY LOST REVENUE OR PROFIT, LOST OR DAMAGED DATA, BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE THE CHARGEPOINT NETWORK, ANY CHARGEPOINT SERVICES, THIS AGREEMENT, A GRANT OR RECEIPT OF RIGHTS OR OTHERWISE OR BASED ON ANY EXPRESSED, IMPLIED OR CLAIMED WARRANTIES BY SUBSCRIBER NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT.

**8.3 ELECTRICAL, CELLULAR AND INTERNET SERVICE INTERRUPTIONS.** Neither CPI nor Subscriber shall have any liability whatsoever to the other with respect to damages caused by: (i) electrical outages, power surges, brown-outs, utility load management or any other similar electrical service interruptions, whatever the cause; (ii) interruptions in wireless or cellular service linking Charging Stations to ChargePoint; (iii) interruptions attributable to unauthorized ChargePoint Network intrusions; (iv) interruptions in services provided by any Internet service provider not affiliated with CPI; or (v) the inability of a Charging Station to access ChargePoint as a result of any change in product offerings (including, without limitation, the any network upgrade or introduction of any “next generation” services) by any wireless or cellular carrier. This includes the loss of data resulting from such electrical, wireless, cellular or Internet service interruptions.

**8.4 LIMITATION OF LIABILITY.** CPI’s aggregate liability under this Agreement shall not exceed the greater of (i) \$25,000 or (ii) aggregate Subscription Fees paid by Subscriber to CPI in the twelve (12) calendar months prior to the event giving rise to the liability.

**8.5 CELLULAR CARRIER LIABILITY.** IN ORDER TO DELIVER THE CHARGEPOINT SERVICES, CPI HAS ENTERED INTO CONTRACTS WITH ONE OR MORE UNDERLYING WIRELESS SERVICE CARRIERS (THE “UNDERLYING CARRIER”). SUBSCRIBER HAS NO CONTRACTUAL RELATIONSHIP WITH THE UNDERLYING CARRIER AND SUBSCRIBER IS NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN CPI AND THE UNDERLYING CARRIER. SUBSCRIBER UNDERSTANDS AND AGREES THAT THE UNDERLYING CARRIER HAS NO LIABILITY OF ANY KIND TO SUBSCRIBER, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE.. SUBSCRIBER HAS NO PROPERTY RIGHT IN ANY NUMBER



ASSIGNED TO IT, AND UNDERSTANDS THAT ANY SUCH NUMBER CAN BE CHANGED. SUBSCRIBER UNDERSTANDS THAT CPI AND THE UNDERLYING CARRIER CANNOT GUARANTEE THE SECURITY OF WIRELESS TRANSMISSIONS, AND WILL NOT BE LIABLE FOR ANY LACK OF SECURITY RELATING TO THE USE OF THE CHARGEPOINT SERVICES.

**8.6 ADDITIONAL RIGHTS.** BECAUSE SOME STATES OR JURISDICITONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES AND/OR THE DISCLAIMER OF IMPLIED WARRANTIES AS SET FORTH IN THIS SECTION 8, ONE OR MORE OF THE ABOVE LIMITATIONS MAY NOT APPLY; PROVIDED THAT, IN SUCH INSTANCES, CPI'S LIABILITY AND/OR IMPLIED WARRANTIES GRANTED IN SUCH CASES SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

**9. TERM, RENEWAL AND TERMINATION.**

**9.1 TERM OF AGREEMENT.** This Agreement shall become effective on the Effective Date and shall continue until the expiration of all of Subscriber's Cloud Plans.

**9.2 CLOUD PLAN TERM.** Each Cloud Plan acquired by Subscriber shall commence as follows: Each Cloud Plan acquired for use with a new Charging Station will commence on the earlier to occur 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. Upon expiration of the original term, this Agreement will renew automatically for successive one-year terms at the list price applicable thereto, subject to increases (not to exceed 5% annually) and Subscriber's right to terminate below. Should the renewal be cancelled and subsequently be requested to be reinstated by Subscriber, reinstatement will be subject to the payment of Subscription Fees for any lapse period plus reasonable reinstatement fee. If, however, at any time after the original term Subscriber wishes to terminate a Cloud Plan that has been automatically renewed, Subscriber may do so by providing CPI thirty (30) days' written notice of cancellation and CPI will issue Subscriber a pro-rata refund of any funds paid for periods from the effective date of cancellation to the end of the auto-renewed term. Renewals of Cloud Plans will commence on the date of the expiration of the Subscription being renewed. All other Cloud Plans will commence on the date of activation of such Cloud 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 Cloud Plan shall continue for the applicable duration thereof, unless this Agreement is terminated earlier in accordance with its terms.

**9.3 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 five (5) 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.

#### **9.4 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, (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, or (iii) upon providing thirty (30) days prior written notice.

**9.5 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 Cloud 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. Except as otherwise set forth in this Agreement, in no event shall any termination relieve Subscriber of any unpaid Subscription Fees due CPI for the Cloud Plan term in which the termination occurs or any prior Cloud Plan term.

**9.6 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.

**10. INDEMNIFICATION.** Intentionally Deleted.

#### **11. GENERAL.**

**11.1 AMENDMENT OR MODIFICATION.** This Agreement may only be revised by a writing signed by both Parties.

**11.2 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.

**11.3 FORCE MAJEURE.** Except with respect to payment obligations, 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.

#### **11.4 NOTICE TO CALIFORNIA CUSTOMERS.**

(a) California's Low Carbon Fuel Standard ("LCFS") was enacted to ensure that the mix of fuels sold by California oil refiners and distributors meets applicable greenhouse gas emissions targets. California has a statewide goal to reduce carbon intensity of transportation fuels by at least 10% by 2020.

(b) The ChargePoint Network can track the fueling of electric vehicles, which positively contributes to reducing California's carbon intensity. If applicable reporting requirements are met, LCFS credits are issued by the California Air Resources Board. An available LCFS credit may be claimed by certain owners and operators of electric vehicle charging stations, including both Subscriber and CPI. However, the LCFS credits are only available to one party, meaning any available credits may be claimed by either Subscriber or CPI, but not by both. If Subscriber intends to claim the LCFS credits, CPI will not assist in the reporting and other administrative obligations necessary to generate such credits, unless compensated by a mutually agreed to percentage in writing prior to performing the reporting work.

(c) Subscriber agrees that it will provide CPI with written notice of its intent to claim LCFS credits within ten (10) days of the date of the Effective Date. If Subscriber does not currently intend to claim the LCFS credits, but desires to do so at any time in the future, Subscriber may, by providing written notice to CPI, elect to claim LCFS credits generated thirty (30) days or more after the date of such notice. Subscriber represents and warrants to CPI that, in the absence of providing written notice, Subscriber will not claim any LCFS credits. All notices shall be provided by email to CPI at [lcsnotification@chargepoint.com](mailto:lcsnotification@chargepoint.com).

#### **11.5 NOTICE TO OREGON CUSTOMERS**

(a) Oregon's Clean Fuel Program ("OCFP") was created with the purpose of reducing greenhouse gas emissions in the transportation sector.

(b) The fueling of electric vehicles, and the operation of the ChargePoint Network, contributes to reducing Oregon's greenhouse gas emissions and is eligible for OCFP credits, which are issued by the Oregon Department of Environmental Quality. By reporting the amount of electric vehicle fueling, ChargePoint is able to help Oregon track the growing use of electric vehicles in the state, for which ChargePoint will receive OCFP credits.

(c) An available OCFP credit may be claimed by certain owners and operators of electric vehicle charging stations, including both Subscriber and CPI. However, the OCFP credits are only available to one party. This means any available credits may be claimed by either Subscriber or CPI, but not by both. CPI intends to claim available OCFP credits generated from use of the Charging Stations, but will not claim any available OCFP credits that Subscriber intends to claim.

(d) Subscriber agrees that it will provide CPI with written notice of its intent to claim OCFP credits within ten (10) days of the date of the Effective Date. If Subscriber does not currently intend to claim the OCFP credits, but desires to do so at any time in the future, Subscriber may, by providing written notice to CPI, elect to claim OCFP credits generated thirty (30) days or more after the date of such notice. Subscriber represents and warrants to CPI that, in the absence of providing written notice, Subscriber will not claim any OCFP credits. All notices shall be provided by

email to CPI at [lcfsnotification@chargepoint.com](mailto:lcfsnotification@chargepoint.com).

**11.6 INJUNCTIVE RELIEF.** Subscriber acknowledges that damages for improper use of the ChargePoint Services may be irreparable; therefore, CPI is entitled to seek equitable relief, including but not limited to preliminary injunction and injunction, in addition to all other remedies.

**11.7 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.

**11.8 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. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**11.9 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.

**11.10 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.

**11.11 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.

**11.12 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.

**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 subscribe to a Cloud Plan that includes CPI’s management, collection and/or processing services related to such fees (“Flex Billing”).

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

1.1 **“CPI Fees”** means a fee, currently equal to ten percent (10%) of Session Fees, charged for a particular Session. CPI Fees are charged by CPI in exchange for its collection and processing of Session Fees on behalf of Subscriber. CPI will provide Subscriber with thirty (30) days prior written notice (which may include, without limitation, notice provided by CPI through its regular newsletter to Subscriber) of any increase in CPI Fees.

1.2 **“Net Session Fees”** means the total amount of Session Fees collected on behalf of the Subscriber by CPI, less CPI 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.

1.3 **“Session”** or **“Charging Session”** means the period of time 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 two (2) minutes commencing when a User has accessed such Charging Station and ending when such User has terminated such access.

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

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

2.1. **SESSION FEES.** Subscriber shall have sole authority to determine and set Session Fees. 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) CPI Fees and (ii) to the extent required by Section 3, applicable Taxes.

2.3 **PAYMENT TO SUBSCRIBER OF NET SESSION FEES.** CPI will remit Net Session Fees to Subscriber, not less than quarterly, provided that the amount due to Subscriber hereunder is at least two hundred and fifty U.S. Dollars (\$250) (or, if

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Subscriber is located in Canada, two hundred and fifty Canadian dollars) or more. Notwithstanding, the foregoing, CPI shall remit any unpaid Net Session Fees, regardless of the amount, to Subscriber at least annually and within thirty (30) days of the expiration or termination of this Agreement. All payments shall be made by ACH. In order to facilitate such payments, Subscriber agrees to provide to CPI, or its payment provider, Subscriber's bank information to enable electronic remittance of the Net Session Fees. If the Subscriber requests payment in a manner other than ACH (e.g., check or wire transfer), Subscriber agrees to bear the reasonable costs related to such request.

**3. TAXES.** If applicable, Subscriber is responsible for setting pricing on a Tax inclusive basis. CPI is not responsible for remittance of any Taxes on behalf of Subscriber and Subscriber shall be responsible to report and remit any and all applicable taxes whether state, federal, provincial or otherwise; 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.

**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 Cloud Plan subscribers.

**2. API USE.** Subscriber may use the APIs as and to the extent permitted by Subscriber’s Cloud 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 Cloud Plan, and Subscriber’s particular Cloud 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 Rights Grantors and Rights Grantees 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 **“Rights Grantor”** means Subscriber.

1.2 **“Rights Grantee”** means any person to whom Subscriber has granted Rights. For purposes of this Agreement, a Subscriber shall be deemed to have granted Rights to the entity assisting Subscriber with creating its account and initiating Subscriber’s access to Services.

2. **TERMS.** This Section governs Subscriber’s granting of Rights as a Rights Grantor.

2.1 **LIMITED RIGHTS.** A Rights Grantee’s right to access and use the ChargePoint Services for and on behalf of a Rights Grantor is limited to the specific Rights granted by such Rights Grantor to such Rights Grantee. Such Rights may be limited according to the Cloud Plan(s) subscribed to by Subscriber. Subscriber may revoke Rights, or any portion thereof, it has granted to a Rights Grantee at will and such Rights will thereafter be terminated with respect to such Rights Grantee. In no event may Subscriber grant Rights in excess of those provided to it through the Cloud Plan(s) to which it has subscribed.

2.2 **RESPONSIBILITY FOR AUTHORIZED USER.** All use of the ChargePoint Services by a Rights Grantee 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 Rights Grantee 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 a Rights Grantor to extend Rights to Rights Grantees. The mere extension of such Rights by a Rights Grantor to a Rights Grantee does not constitute an agreement between Rights Grantor and the Rights Grantee with respect to the granted Rights or the exercise of such Rights by the Rights Grantee. 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 Rights Grantor and the Rights Grantee to enter into such an agreement on terms mutually acceptable to each.

**ATTACHMENT B  
CONTRACTORS PRICING**

~~1. **Compensation:** This is a firm fixed fee Contract between the County and Contractor for Network Electric Vehicle Charging Stations (EVCS), Service and Maintenance as set forth in Attachment A, “Scope of Work.”~~

~~The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. **The County shall have no obligation to pay any sum in excess of the Fixed Prices and Total Contract Amount specified herein unless authorized by amendment in accordance with Articles C and P of the County Contract Terms and Conditions, which may require approval by the County Board of Supervisors.**~~

~~**Fees and Charges:** Contract Capacity up to \$1,368,522, which may be expended on the following items, throughout the term of this Contract. County will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:~~

~~A. **Costs Table:**~~

<del>Line Item</del>	<del>Product Name</del>	<del>Product Description</del>	<del>Unit Price</del>
<del>1</del>	<del>CT4021-GW1</del>	<del>Dual-Output Gateway Option USA, Bollard Unit—208/240V @30A with Cord Management—</del>	<del>\$5,408.00</del>
<del>2</del>	<del>CT4021</del>	<del>Dual-Output, Bollard Unit—208/240V @30A with Cord Management</del>	<del>\$5,021.00</del>
<del>3</del>	<del>CPCLD-COMMERCIAL-5</del>	<del>5yr Prepaid Commercial Cloud Plan. Includes Secure Network Connection, On-going Station Software updates, Station Inventory, 24x7 Driver Support, Host Support, Session Data and Analytics, Fleet Vehicle Management and Integration, Fleet Access Control, Valet Dashboard, Power Management (Circuit, Panel, Site Sharing), Scheduled Charging, Driver Access Control, Pricing and Automatic Funds Collection, Waitlist, Videos (on supported hardware). (Plan shall not extend beyond term of the Contract. Service plan shall be prorated if necessary to coincide with Contract term)</del>	<del>\$1,105.00</del>

4	<del>CT4000-ASSURE5</del>	<del>5 prepaid years of ChargePoint Assure. (Plan shall not extend beyond term of the Contract. Service plan shall be prorated if necessary to coincide with Contract term)</del>	<del>\$2,495.00</del>
5	<del>CPE250C-CCS1-CHD</del>	<del>CP Express 250 Station (50 kW) – includes Express 250 Station, 2x Power Modules, 1x CCS1 cable, 1x CHAdeMO cable, North America Modem/SIM, eUL and UL listed, requires CPE250-CMT IMPERIAL in US, CPE250-CMT METRIC in Canada. CPE250-CMT-IMPERIAL/ METRIC not included.</del>	<del>\$30,430.00</del>
6	<del>CPE250C-625-UPGRADE</del>	<del>Enable upgrade of CPE250 from 50 kW to 62.5 kW</del>	<del>\$4,250.00</del>
7	<del>CPCLD-ENTERPRISEDC-5</del>	<del>5yr Prepaid, DC, Enterprise Cloud Plan. Includes Secure Network Connection, On-going Station Software updates, Station Inventory, 24x7 Driver Support, Host Support, Session Data and Analytics, Fleet Vehicle Management and Integration, Fleet Access Control, Valet Dashboard, Time of Use-varying Power Management (Circuit, Panel, Site-Sharing), Scheduled Charging, Driver Access Control, Pricing and Automatic Funds Collection, Waitlist, Videos (on supported hardware), Meter Data and Advanced Analytics, Building/Energy Management System API, Plug n charge (*), Real-Time DC Dynamic Power Management (*), Occupancy Detection (*), Predictive Maintenance and Diagnostic (Plan shall not extend beyond term of the Contract. Service plan shall be prorated if necessary to coincide with Contract term.)</del>	<del>\$3,788.00</del>
8	<del>EXPRESS-ASSURE5</del>	<del>5yr prepaid Assure Plan priced per power module (Plan shall not extend beyond term of the Contract. Service plan shall be prorated if</del>	<del>\$7,750.00</del>

		<del>necessary to coincide with Contract term)</del>	
9	<del>CPCLD-COMMERCIAL-1 year</del>	<del>Cloud: Renewal  (Plan shall not extend beyond term of the Contract. Service plan shall be prorated if necessary to coincide with Contract term.)</del>	<del>\$221.00</del>
10	<del>CT4000 ASSURE1 year</del>	<del>Warranty: Assure Renewal  (Plan shall not extend beyond term of the Contract. Service plan shall be prorated if necessary to coincide with Contract term.)</del>	<del>\$688.00</del>
11	<del>CPCLD-COMMERCIAL-DC-1 year</del>	<del>Cloud: Renewal  (Plan shall not extend beyond term of the Contract. Service plan shall be prorated if necessary to coincide with Contract term.)</del>	<del>\$470.00</del>
12	<del>EXPRESS ASSURE1 year</del>	<del>Warranty: AssureRenewal  (Plan shall not extend beyond term of the Contract. Service plan shall be prorated if necessary to coincide with Contract term.)</del>	<del>\$1,850.00</del>

~~B. Additional network EVCS along with their respective cloud network and maintenance plans from the above Costs Table may be purchased against this Contract.~~

~~C. **Total Contract Amount Not to Exceed:** ..... **\$1,368,522**~~

~~Amendment No. 1~~

~~**For extension term starting August 27, 2024, Total Contract Amount Not to Exceed: \$600,000**~~

- ~~2. **Discounts and Pricing Structure:** Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract. Contractor shall provide the list price and discount price on all invoice(s).~~
- ~~3. **Contractor's Expense:** The Contractor will be responsible for all administrative costs including but not limited to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.~~
- ~~4. **Payment Terms Payment in Arrears:** Invoices are to be submitted in arrears to the user agency/department to the address provided below, unless otherwise directed in this Contract. Contractor shall reference Contract number on invoice. Payment will be Net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the~~

~~agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.~~

~~Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.~~

~~Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.~~

~~5. **Invoicing Instructions:** The Contractor shall submit invoices to County on Contractor's letterhead. Each invoice shall have a unique number and shall include the following information:~~

- ~~a. Contractor's name and address~~
- ~~b. Contractor's remittance address, if different from (1), above~~
- ~~c. Name of County agency/department/contact person~~
- ~~d. Delivery/service address~~
- ~~e. Contract number~~
- ~~f. Service Date~~
- ~~g. Description of Services~~
- ~~h. Detailed description of commodity transition with unit price, discounted price and totals.~~
- ~~i. Detailed description of total labor hours and charges by employee/location/date/time~~
- ~~j. Total~~
- ~~k. Taxpayer ID number~~

~~Invoices and supporting documentation are to be forwarded to:~~

~~OC Public Works  
Attn: Accounts/Payables  
PO Box 4048  
Santa Ana, CA 92702-4048  
Email: [accountspayables@ocpw.ocgov.com](mailto:accountspayables@ocpw.ocgov.com)~~

~~Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the DPA.~~

Amendment No. 1

**ATTACHMENT B  
CONTRACTOR'S PRICING**

1. **Compensation:** This is a firm-fixed fee Contract between the County and Contractor for Network Electric Vehicle Charging Stations (EVCS), Service and Maintenance as set forth in Attachment A, "Scope of Work."

The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. **The County shall have no obligation to pay any sum in excess of the Fixed Prices and Total Contract Amount specified herein unless authorized by amendment in accordance with Articles C and P of the County Contract Terms and Conditions, which may require approval by the County Board of Supervisors.**

2. **Fees and Charges:** Contract Capacity up to \$1,368,522, which may be expended on the following items, throughout the term of this Contract. County will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:

A. Costs Table:

Line Item	Product Name	Product Description	Unit Price
1	CT4021-GW1 (Bollard) CT4023-GW1 (Wall)	Dual Output Gateway North America, Bollard or Wall Unit - 208/240V @30A with Cord Management	\$5,408.00
2	CT4011-GW1 (Bollard) CT4013-GW1 (Wall)	Single Output Gateway North America, Bollard/Wall Unit - 208240V @30A with Cord Management	\$5,021.00
3	CPF50-L23-PEDMNT-CMK8-Dual-GW-(NACS-)USA	2x Type 1 (NACS) Output Gateway 208/240V @ 50A, 7m/23', 5.5m/23' Cable Mgt, Pedestal, RFID, Cellular, Vodafone e-SIM, UL, 2 YR Parts Warranty, Includes \$140/yr Essential postpaid cloud plan (T&Cs apply). Additional cloud plans available. Station requires a cloud plan to operate.	\$2,985.00



Line Item	Product Name	Product Description	Unit Price
4	CPF50-L18-PEDMNT-CMK6-Dual-GW-(NACS)-USA	2x Type 1 (NACS) Output Gateway 208/240V @ 50A, 5.5m/18', 2.4m/18' Cable Mgt, Pedestal, RFID, Cellular, Vodafone e-SIM, UL, 2 YR Parts Warranty, Includes \$140/year Essential postpaid cloud plan (T&Cs apply). Additional cloud plans available. Station requires a cloud plan to operate.	\$2,263.00
5	CP6021B-50A-L5.5 (Bollard) CP6023B-50A-L5.5 (Wall)	Dual Output Gateway 208/240V @ 50A, 5.5m/18' Cable, 6' Cable Management Kit, Pedestal Mount, 8" Touch Display, Contactless Credit Card and RFID Reader, Cellular/Wi-Fi, UL, Energy Star, Power Share Jumper, 2 YR Parts Warranty	\$7,650.00
6	CP6011B-50A-L7 (Bollard) CP6013B-50A-L7 (Wall)	Single Output Gateway 208/240V @ 50A, 7m/23' Cable, 6' Cable Management Kit, Pedestal Mount, 8" Touch Display, Contactless Credit Card and RFID Reader, Cellular/Wi-Fi, UL, Energy Star, Power Share Jumper, 2 YR Parts Warranty	\$6,318.00
7	CP6021B-80A-L5.5 (Bollard) CP6023B-80A-L5.5 (Wall)	Dual Output Gateway 208/240V @ 80A, 5.5m/18' Cable, 6' Cable Management Kit, Pedestal Mount, 8" Touch Display, Contactless Credit Card and RFID Reader, Cellular/Wi-Fi, UL, Energy Star, Power Share Jumper, 2 YR Parts Warranty	\$9,989.00
8	CP6011B-80A-L7 (Bollard) CP6013B-80A-L7 (Wall)	Single Output Gateway 208/240V @ 80A, 7m/23' Cable, 6' Cable Management Kit, Pedestal Mount, 8" Touch Display, Contactless Credit Card and RFID Reader, Cellular/Wi-Fi, UL, Energy Star, Power Share Jumper, 2 YR Parts Warranty	\$6,784.00

Line Item	Product Name	Product Description	Unit Price
9	CPCLD-COMMERCIAL-5	Prepaid Commercial Cloud Plan subscription with station management features such as: Custom Video uploads and Automatic Software Updates, driver and fleet management features including: Access Control and Pricing & Automatic Payment Collection, as well as energy and power management features which include Power Sharing. Real-time dashboards and reports provided for applicable features. Station Activation purchase required.	\$1,640.00
10	CT4000-ASSURE5	5 prepaid years of ChargePoint Assure. for CT4000 stations. Includes Parts and Labor Warranty, Remote Technical Support, On-Site Repairs when needed, Unlimited Configuration Changes, and Reporting.	\$2,400.00
11	CT4000-ASSURE5	5 prepaid years of ChargePoint Assure. for CT4000 stations. Includes Parts and Labor Warranty, Remote Technical Support, On-Site Repairs when needed, Unlimited Configuration Changes, and Reporting.	\$2,400.00
12	CP6000-ASSURE5	5 prepaid years of ChargePoint Assure. for CP6000 stations. Includes Parts and Labor Warranty, Remote Technical Support, On-Site Repairs when needed, Unlimited Configuration Changes, and Reporting.	\$1,700.00
13	CPCB-CT4021-GW1-C5A5	5 YEARS OF CHARGEPOINT CLOUD , ASSURE PARTS AND LABOR WARRANTY STATION PROTECTION WITH ACTIVATION INCLUDES A CT4021-GW1 STATION	\$10,270.00

Line Item	Product Name	Product Description	Unit Price
14	CPE250C-625-CCS1-200A-CHD	ChargePoint Express 250 Station (62.5 kW) - includes Express 250 Station, 2x Power Modules, 1x CCS1 200A cable, 1x CHAdeMO cable, North America Modem/SIM, cUL and UL listed, requires CPE250-CMT-IMPERIAL in US, CPE250-CMT-METRIC in Canada. CPE250-CMT-IMPERIAL/METRIC not included.	\$30,430.00
15	CPCLD-ENTERPRISE-DC-5	Enterprise Cloud Plan subscription with advanced station management features such as: Custom Video uploads, and Automatic Software Updates, driver and fleet management features including: Access Control and Pricing & Automatic Payment Collection, as well as advanced energy and power management features which include: Time of Use Power Sharing and Energy Management APIs. Real-time dashboards and reports provided for applicable features including 15 min meter data readings and associated advanced energy reports.	\$5,400.00
16	CPE250-ASSURE-5	5 prepaid years of ChargePoint Assure for CPE250 stations. Includes Parts and Labor Warranty, Remote Technical Support, On-Site Repairs when needed, Unlimited Configuration Changes, and Reporting.	\$13,650.00
17	CPCLD-FLEETENT-DC-5	Fleet Enterprise Cloud Plan subscription. Includes advanced station management features such as: Automatic Software Updates, fleet management features including: Access Control and Pricing & Automatic Payment Collection, as well as advanced energy and power management features which include: Time of Use Power Sharing and Energy Management APIs. Real-time dashboards and reports provided for applicable features including 15 min meter data readings and associated advanced energy reports.	\$4,275.00

Line Item	Product Name	Product Description	Unit Price
18	CPF-ASSURE5	2 prepaid year of ChargePoint Assure for CPF stations. Includes Parts and Labor Warranty, Remote Technical Support, On-Site Repairs when needed, Unlimited Configuration Changes, and Reporting.	\$280.00
19	CPCB-CP6021B-80A-L5.5-C5A5	5 YEARS OF CHARGEPOINT CLOUD , ASSURE PARTS AND LABOR WARRANTY STATION PROTECTION WITH ACTIVATION INCLUDES A CP6021B-80A-L5.5 STATION	\$14,870.00
20	CPCB-CP6021B-50A-L5.5-C5A5	5 YEARS OF CHARGEPOINT CLOUD , ASSURE PARTS AND LABOR WARRANTY STATION PROTECTION WITH ACTIVATION INCLUDES A CP6021B-50A-L5.5 STATION	\$12,120.00
21	CPCB-EXPP-PL1-200kW-CCS-NACS-Pack-E5A5	EXPRESS PLUS PL1000 PACKAGE WITH 2 NACS CCS PORTS AND 200KW SITE POWER WITH ACTIVATION AND COMMISSIONING AND 5 YEARS OF CLOUD AND ASSURE PARTS AND LABOR WARRANTY	\$155,041.00
22	CPCB-EXPP-PL1-400kW-CCS-NACS-Pack-E5A5	EXPRESS PLUS PL1000 PACKAGE WITH 2 NACS CCS PORTS AND 400KW SITE POWER WITH ACTIVATION AND COMMISSIONING AND 5 YEARS OF CLOUD AND ASSURE PARTS AND LABOR WARRANTY	\$247,378.00
23	CPCB-EXPP-PL1-200kW-CCS-Fleet-Pack-E5A5	EXPRESS PLUS PL1000 PACKAGE WITH 2 CCS CCS PORTS AND 200KW SITE POWER WITH ACTIVATION AND COMMISSIONING AND 5 YEARS OF CLOUD AND ASSURE PARTS AND LABOR WARRANTY	\$161,285.00
23	CPCB-EXPP-PL1-400kW-CCS-Fleet-Pack-E5A5	EXPRESS PLUS PL1000 PACKAGE WITH 2 CCS CCS PORTS AND 400KW SITE POWER WITH ACTIVATION AND COMMISSIONING AND 5 YEARS OF CLOUD AND ASSURE PARTS AND LABOR WARRANTY	\$254,122.00
25	CPCB-EXPP-PL2-400kW-LCC-CCS-Pack-E5A5	EXPRESS PLUS PL2000 PACKAGE WITH 2 CCS LCC PORTS AND 400KW SITE POWER WITH ACTIVATION AND COMMISSIONING AND 5 YEARS OF CLOUD AND ASSURE PARTS AND LABOR WARRANTY	\$250,248.00

B. Additional network EVCS along with their respective cloud network and maintenance plans from the above Costs Table may be purchased against this Contract.

Amendment No. 1

~~C. **Total Contract Amount Not to Exceed:** ..... **\$1,368,522**~~

C. **Total Contract amount, not-to-exceed \$895,769.08 for the three (3) years between August 27, 2024 and August 26, 2027, and not-to-exceed \$1,368,522 for the total eight (8) years, between August 27, 2019 and August 26, 2027.**

3. **Discounts and Pricing Structure:** Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract. Contractor shall provide the list price and discount price on all invoice(s).

4. **Contractor's Expense:** The Contractor will be responsible for all administrative costs including but not limited to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.

5. **Payment Terms – Payment in Arrears:** Invoices are to be submitted in arrears to the user agency/department to the address provided below, unless otherwise directed in this Contract. Contractor shall reference Contract number on invoice. Payment will be Net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

6. **Invoicing Instructions:** The Contractor shall submit invoices to County on Contractor's letterhead. Each invoice shall have a unique number and shall include the following information:

- a. Contractor's name and address
- b. Contractor's remittance address, if different from (1), above
- c. Name of County agency/department/contact person
- d. Delivery/service address
- e. Contract number
- f. Service Date
- g. Description of Services
- h. Detailed description of commodity transition with unit price, discounted price and totals.
- i. Detailed description of total labor hours and charges by employee/location/date/time
- j. Total
- k. Taxpayer ID number

Invoices and supporting documentation are to be forwarded to:

OC Public Works  
Attn: Accounts/Payables

PO Box 4048  
Santa Ana, CA 92702-4048  
Email: [accountspayables@ocpw.ocgov.com](mailto:accountspayables@ocpw.ocgov.com)

Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the DPA.

**ATTACHMENT C**  
**STAFFING PLAN**

(Complete and submit as B.1., in Part 2 of Section 2 “Response Requirements.”)

<b>Name</b>	<b>Classification/Designation</b>	<b>Years of Experience</b>
<b>Brendan O’Donnell</b>	<b>Project Manager</b>	<b>23</b>
<b>Gavin Torres</b>	<b>Associate Project Manager</b>	<b>5</b>
<b>Steve Buzow</b>	<b>Field Service Dispatch</b>	<b>20</b>
<b>Lin Li</b>	<b>Technical Support</b>	<b>10</b>

The Contractor understands that the personnel represented as assigned to the Contract must remain working on the Contract throughout the duration of the Contract unless otherwise requested or approved by the County. Substitution or addition of key personnel in any given category or classification shall be allowed only with prior written approval of the County Building Manager. *Note: The written approval of substituted Key Personnel is for departmental use only and shall not be used for auditing purposes outside OC Public Works.*

Contractor may reserve the right to involve other personnel, as their services are required. The specific individuals will be assigned based on the need and timing of the service/classification required. Assignment of additional key personnel shall be subject to County Building Manager written approval. *Note: The written approval of additional Key Personnel is for departmental use only and shall not be used for auditing purposes outside OC Public Works.* County reserves the right to have any personnel removed from providing services to County under this Contract. County is not required to provide any reason for the request for removal of any personnel.