



# Huntsville, Alabama

308 Fountain Circle  
Huntsville, AL 35801

## Cover Memo

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**Meeting Type:** City Council Regular Meeting **Meeting Date:** 2/22/2024

**File ID:** 2024-1165

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**Department:** Huntsville Utilities

**Subject:**

**Type of Action:** Approval/Action

Resolution authorizing Mayor Battle to enter into a Memorandum of Agreement with Huntsville Utilities for the installation and operation of an electric vehicle charging station in the public parking facility located at 309 Pelham Ave., SW, 35801.

Resolution No.

**Finance Information:**

**Account Number:** N/A

**City Cost Amount:** N/A

**Total Cost:** N/A

**Special Circumstances:**

**Grant Funded:** N/A

**Grant Title - CFDA or granting Agency:** N/A

**Resolution #:** N/A

**Location: (list below)**

**Address:** N/A

**District:** District 1  District 2  District 3  District 4  District 5

**Additional Comments:**

N/A

**RESOLUTION NO. 24-\_\_\_\_\_**

**BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, that the Mayor is hereby authorized to execute a Memorandum of Understanding by and between the City of Huntsville and the City of Huntsville Electric Utility Board, on behalf of the City of Huntsville, which said Memorandum of Understanding is substantially in words and figures the same as that certain document attached hereto and identified as "Memorandum of Understanding Between the City of Huntsville and the City of Huntsville Electric Utility Board," consisting of forty-three (43) pages, including exhibits, and the date of February 22, 2024, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document after being signed by the Mayor, or his designee, shall be permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

**ADOPTED** this the 22nd day of February, 2024.

\_\_\_\_\_  
President of the City Council of the City of  
Huntsville, Alabama

**APPROVED** this the 22nd day of February, 2024.

\_\_\_\_\_  
Mayor of the City of Huntsville, Alabama

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the "Memorandum" or "MOU") is entered into this 22nd day of February, 2024, (the "Effective Date"), by and between The City of Huntsville, a municipal corporation of the State of Alabama ("City") and The City of Huntsville Electric Utility Board ("HU"), sometimes collectively referred to as the "Parties."

### RECITALS

**WHEREAS**, HU desires to build, own and operate an electric vehicle charging facility (the "Facility") to be located at, 309 Pelham Avenue SW, Huntsville, Alabama; and

**WHEREAS**, City desires to provide the space required for the Facility and to share responsibility with HU for the installation, security, electric power costs, maintenance and operation of the Facility.

**NOW, THEREFORE**, for and in consideration of the foregoing premises, which are deemed a material part of this MOU, by this reference incorporated herein, the mutual agreement, provisions, and terms of this MOU, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

**1. Location.** The Facility shall be installed along the south wall of the parking garage at Twickenham Square. The Facility is expected to occupy four (4) spaces on the left of the column and four (4) spaces on the right of the column to install the charging units to provide fast charging for four vehicles simultaneously. The anticipated location of the Facility is depicted in the photographs attached as Attachment A hereto.

**2. Installation.** Pursuant to the Agreement for Consulting Services among HU, the Tennessee Valley Association (TVA) and Seven States Power (Seven States) attached as Attachment B hereto, HU will install the Facility with coordination and approval from the City, TVA and Seven States.

**3. Operation and Maintenance.** HU shall own the Facility and will be responsible for the installation of the Facility, pursuant to the Contract for the City of Huntsville, AL for EV Charging Station Maintenance and Operation between HU and ChargePoint, attached as Attachment C hereto. The City will share responsibility for safety monitoring and security of the Facility, as well as traffic control associated with the use and operation of the Facility.

**4. Indemnification.** HU, as limited by the limitations of municipal liability set forth in *Alabama Code* §§ 11-93-2 and 11-47-190, shall indemnify and hold harmless the City, its elected and appointed officials, employees, agents and specified volunteers against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the placement and operation of the Facility inside Garage T, provided that any such claim, damage, loss or expense is attributable to personal injury, including bodily injury sickness, disease or death, or injury to or destruction of tangible property, including loss of use resulting therefrom. Such obligation should not be construed to negate, abridge, or otherwise

\_\_\_\_\_  
President of the City Council of the  
City of Huntsville, Alabama  
Date: February 22, 2024

reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

5. **Insurance.** HU shall obtain and maintain in effect throughout the term of this agreement, Commercial General Liability with the following minimum limits or shall remain self insured in amounts sufficient to provide the following coverages:

\$1,000,000 Per Occurrence Limit  
\$1,000,000 Personal and Advertising Injury  
\$1,000,000 Products/Completed Operations  
\$2,000,000 General Aggregate Limit

Such insurance shall be written on an occurrence basis and shall specifically insure HU against all liability assumed by it hereunder as well as liability imposed by law. The City of Huntsville, its officers, employees, elected officials, agents, contractors, and specified volunteers shall be named as additional insureds through ISO Additional Endorsement CG 20 10 or equivalent that is sufficient to provide coverage for ongoing operations and CG 20 37 or equivalent to provide coverage for completed operations. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, employees, elected officials, agents, contractors, or specified volunteers except it shall be limited in the case of the indemnitee's or indemnitees' sole negligence. Coverage under the HU policy shall be written or endorsed to provide primary coverage to any other valid or collectible insurance. Any City of Huntsville coverage is noncontributory. HU shall provide a Certificate of Liability Insurance evidencing required insurance coverage and contractual verbiage prior to the commencement of any use of the facilities; however, failure of The City to procure the Certificate of Insurance does not waive any insurance provisions. The Certificate Holder section shall read as follows:

City of Huntsville, AL its officers, employees, elected officials, agents, contractors, and specified volunteers  
Attn: City Attorney  
P.O. Box 308  
Huntsville, AL 35804

Such policy of insurance shall be issued by a company authorized to engage in the insurance business in the state of Alabama and shall be approved by the City Attorney of the City of Huntsville prior to Licensee entering upon the Premises upon the terms of this agreement. It is not the intention of the parties to limit the insurance coverage to the minimum limits stated in the contract, but the entire limits of coverage carried if limits are higher than those noted on the Certificate of Insurance.

**6. Term of Memorandum.** The term of this MOU shall commence upon execution by the Parties and shall continue in effect for a period of 1 year. This MOU shall automatically renew each year thereafter for an additional one (1) year term; provided, however, that either Party may terminate the MOU by providing notice to the other of its intention not to renew this Memorandum at least 30 days prior to expiration of any term.

**7. Inspection.** City shall inspect the Facility and assess its acceptability for the intended use. City is not relying upon any representations or warranties concerning the Facility except those that may be set forth herein.

**87. Additional Acts.** Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by any Party hereto, the Parties hereto agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered, any and all such further acts, deeds and assurances, which may reasonably be required to effect the purposes of this Memorandum.

**98. Governing Law.** This Memorandum shall be governed by and construed in accordance with the laws of the State of Alabama.

**10. Execution.** This Memorandum may be executed by facsimile or electronic transmission and in one or more counterparts, each of which shall be an original, all of which when taken together shall constitute one instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Memorandum to be executed by an authorized representative as of the date set forth above.

**The City of Huntsville Electric Utility Board**

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

Witness: \_\_\_\_\_

**The City of Huntsville, Alabama**

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

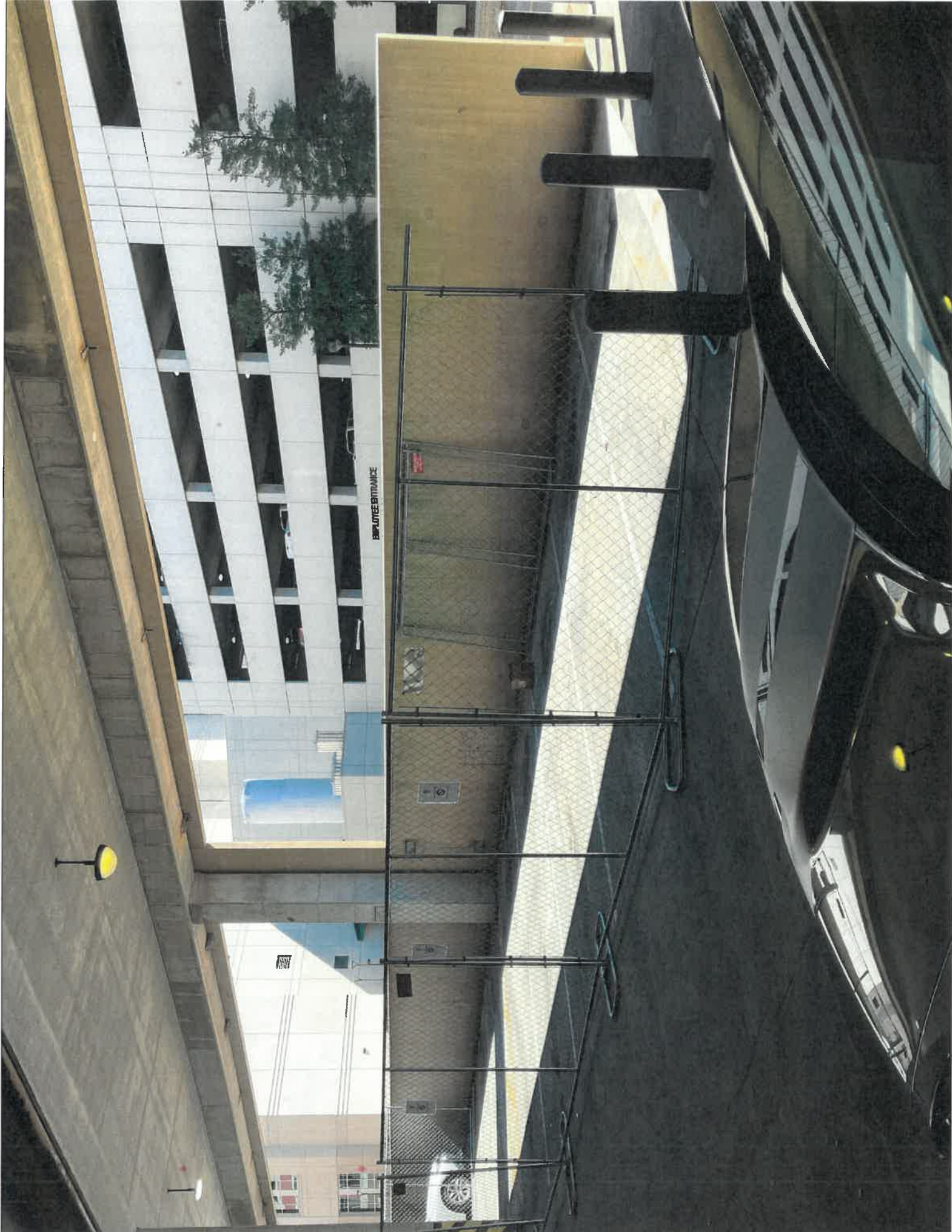
Attest: \_\_\_\_\_  
City Clerk \_\_\_\_\_

**ATTACHMENT A**













EMPLOYEE ENTRANCE

**ATTACHMENT B**

## **AGREEMENT FOR CONSULTING SERVICES**

**THIS AGREEMENT**, made and entered into as of the 5 day of December, 2022, by and between **The City of Huntsville Electric Utility Board** (hereinafter referred to as "**Member**"), a board of the City of Huntsville / Madison County, Alabama and **Seven States Power Corporation**, a nonprofit cooperative corporation organized and existing under the laws of the State of Tennessee (hereinafter referred to as "**Seven States**").

### **WITNESSETH:**

**WHEREAS**, MEMBER from time to time requires consulting services in connection with aspects of the management and operation of its utility system; and

**WHEREAS**, SEVEN STATES is willing to provide consulting services as MEMBER's consultant in those assignments to which this Agreement applies,

**NOW, THEREFORE**, MEMBER and SEVEN STATES mutually agree as follows:

1. Pursuant to the terms and conditions of this Agreement, SEVEN STATES shall perform the consulting services, in the nature of project management and/or project coordination, on such projects as are more particularly described on any one or more Scope of Work Addenda now or hereafter completed and executed by MEMBER and SEVEN STATES (the "Services"), which Scope of Work Addenda may be in the form as attached hereto as **Exhibit A**, and which indicate that they otherwise are intended to be governed by this Agreement. Each Scope of Work Addendum executed between the Parties will be deemed to be a separate contract, incorporating the terms of this Agreement. The Services provided under this Agreement do not include any licensed professional services including, by way of example, accounting, engineering, construction, or legal services. In the course of performing the Services, MEMBER agrees that it hereby vests SEVEN STATES with authority to contact, engage with, communicate with, and negotiate with, on behalf of MEMBER, third-parties, including but not limited to the Tennessee Valley Authority and governmental offices, departments, and authorities; provided however, nothing in this authorization permits SEVEN STATES to enter into any contracts or other binding legal obligations on behalf of MEMBER.

If the Services described on **Exhibit A** (or on any subsequent Scope of Work Addendum) include procurement of any equipment or other tangible personal property, then the terms and conditions of **Exhibit B** are herein incorporated and will apply to such procurement Services.

2. In consideration of the Services performed by SEVEN STATES under this Agreement, MEMBER shall pay SEVEN STATES as set forth in the applicable Scope of Work Addendum.

3. SEVEN STATES will invoice MEMBER for progress payments as set forth in the applicable Scope of Work Addendum, provided that the final progress

payment shall not be due until such time as the applicable portion of the scope of work is complete in all material respects. Invoices submitted by SEVEN STATES to MEMBER are due and payable within thirty (30) days of receipt of same by MEMBER. Fees charged by Seven States are exclusive of, and MEMBER is responsible for (and Seven States may invoice Member for), any federal, state, and local taxes on the services provided under this Agreement (except for any federal, state or local taxes levied on the income of SEVEN STATES). This Agreement may be suspended by SEVEN STATES without notice if payment is sixty (60) days in arrears or it may be terminated by SEVEN STATES if payment is ninety (90) days in arrears.

4. All invoices shall be sent to:

Billing Contact

Name: Melissa Marty, CFO, Huntsville Utilities

Email: melissa.marty@hsvutil.org

Phone: 256-535-1296

5. SEVEN STATES shall indemnify and hold harmless MEMBER, its board members (or members of its governing body), management and employees from and against all costs (including and not limited to attorneys' fees and expenses), claims, suits, actions, causes of action, orders, judgments, and decrees entered by reason of or as a result of the negligent performance or failure of SEVEN STATES to perform its Services under this Agreement.

6. Title VI: SEVEN STATES agrees that it will comply with Title VI of the Civil Rights Act of 1964 and all requirements imposed by MEMBER to the effect that no person shall, on the grounds of race, color, or national origin, be excluded from participating in, or denied the benefits of, or be subject to discrimination under any program or activities for which MEMBER received Federal Financial Assistance. SEVEN STATES agrees to compile appropriate data, maintain records, and submit reports as required to permit effective enforcement of Title VI. If there are any violations of this assurance, MEMBER shall have the right to recommend corrective actions or to seek administrative enforcement of this assurance.

7. SEVEN STATES shall maintain during the life of this Agreement, the following insurance covering SEVEN STATES and all employees utilized by SEVEN STATES during the term of this Agreement.

- A. Worker's Compensation and Employers' Liability Insurance - providing coverage in compliance with the laws of the State of Tennessee and with Employers Liability limits sufficient to be scheduled as covered an underlying policy in the umbrella/excess.
- B. Comprehensive General Liability (Bodily Injury and Property Damage) Insurance on an occurrence basis including personal and advertising injury, in an amount not less than \$1,000,000.00 per occurrence, \$1,000,000.00 aggregate.

- C. Automobile Liability Insurance covering any auto – Bodily injury and property damage combined single limit - \$1,000,000.00 on each occurrence.

8. Either MEMBER or SEVEN STATES may terminate this Agreement with or without cause by giving the other party thirty (30) days' notice that shall specify the date of termination; and either party may terminate any one or more specific Scope of Work Addenda in accordance with this provision, in which case any additional outstanding Scope of Work Addenda will be deemed to be continuing in effect as separate contracts. Upon termination of this Agreement by MEMBER without cause or by SEVEN STATES with cause, SEVEN STATES may cease performance of the Services and shall be entitled to payment (to the extent not already received) in the following amounts:

- A. For Services performed on an hourly basis, 100% of the fees due for Services actually performed through the date of termination, at the agreed hourly rate based on SEVEN STATES' reasonable estimate of the time incurred through the date of termination, but in no event to exceed any "not to exceed" amount for such Services forth in the applicable Scope of Work Addendum.
- B. For Services performed on a "fixed fee" basis, an amount equal to one of the following, as determined by SEVEN STATES: (i) an amount determined by multiplying the fixed fee assigned to each Service by the percentage of completion of each Service through the date of termination, as reasonably determined by SEVEN STATES; or (ii) an amount determined by multiplying SEVEN STATES' reasonable estimate of the time incurred for such Services through the date of termination by an hourly rate of \$250 per hour, but in no event to exceed the fixed fee pricing for each such Service as set forth in the applicable Scope of Work Addendum.
- C. SEVEN STATES shall also be entitled to an additional termination fee equal to fifteen percent (15%) of the "not to exceed" and/or fixed fee amounts set forth in the applicable Scope of Work Addendum, but in no event will the total payment to SEVEN STATES under A. and/or B. and this provision exceed the amounts set forth in the applicable fee provisions of the applicable Scope of Work Addendum.
- D. 100% of any out-of-pocket expenses incurred by SEVEN STATES in the course of performing the Services through the date of termination (including customary reimbursements for expenses such as mileage and meals/travel expenses), and any taxes payable by MEMBER hereunder.

In the case of termination by MEMBER with cause or by SEVEN STATES without cause, SEVEN STATES shall only be entitled to compensation in an amount equal to the reasonable value of Services provided prior to termination, not to exceed the amounts set forth in the applicable Scope of Work Addendum.

9. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, written or oral, between the parties on said subject matter. This Agreement and any applicable authorizations may not be modified, amended, or changed in any manner, nor shall any waiver of any provision of the same be effective except by an instrument in writing signed by the party against whom enforcement of such modification, amendment, change or waiver is sought.

10. Neither MEMBER nor SEVEN STATES may assign or transfer their respective duties or interests in this Agreement without the written consent of the other party.

11. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms hereof, or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12. It is expressly understood that SEVEN STATES is an independent contractor and that nothing in this Agreement shall be construed to designate SEVEN STATES or any of SEVEN STATES' principals, employees, consultants or subcontractors, as servants, agents, partners, joint ventures or employees of MEMBER. The independent contractor relationship established under this Agreement is non-exclusive, and nothing in this Agreement will operate to prohibit SEVEN STATES from providing similar services to other members of SEVEN STATES or to other local power companies.

13. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGE OF ANY KIND WHATSOEVER, INCLUDING, WITHOUT LIMITATION, CLAIMS OF LOSS OF USE, DATA, PROFITS OR REVENUE OR OTHER ECONOMIC LOSS, REGARDLESS OF THE FORM OF ACTION OR THE THEORY OF RECOVERY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The total cumulative liability of SEVEN STATES with respect to this Agreement or anything done in connection therewith is limited to the total price paid for the services performed under the scope of work or purchase order, excluding claims based upon the gross negligence or intentional misconduct of SEVEN STATES.

14. SEVEN STATES retains exclusive title and ownership of all deliverables provided under the scope of work and/or purchase order. The work performed herein shall not be considered "work for hire" and SEVEN STATES grants MEMBER a personal, nontransferable, nonexclusive license to use the deliverables for internal business purposes only.

15. To the extent that the Services provided under this Agreement involve consultation in connection with the design, development or implementation of a solar



generation project or an electric vehicle charging infrastructure project, MEMBER grants SEVEN STATES the right to access, upon reasonable request and at no additional cost to MEMBER, all data relating to battery storage, power supply generation (in the case of a solar project) and electric vehicle charging station utilization and energy consumption (in the case of electric vehicle charging infrastructure) for the term of this Agreement. The rights of access under this section shall survive termination, expiration and/or completion of this Agreement and shall continue for so long as the applicable project is in commercial operation. MEMBER grants SEVEN STATES a personal, nontransferable, nonexclusive license to use such information for its internal business purposes. Notwithstanding the provisions of Section 16, below, SEVEN STATES may also use such information in connection with analysis, reports, presentations and other publications that are provided or made available to one or more third parties, so long as such information is provided on an anonymous or aggregated basis and is not readily identifiable with MEMBER or MEMBER's solar or electric vehicle infrastructure project.

16. The parties understand and agree that all information exchanged in the course of performance under this Agreement shall be deemed confidential to the extent permitted by applicable law; provided, however, that confidential information does not include information that is or becomes generally available to the public other than through a breach of this Agreement or information that is communicated to the receiving party by a third party that had no confidentiality obligations with respect to such information. Further, the parties agree that when in possession of the other's confidential information the receiving party will use the same degree of care it utilizes to protect its own confidential information, but in no event less than reasonable care. Except as otherwise required by applicable law, confidential information may be disclosed only to employees, agents and contractors with a need to know, and to its auditors and legal counsel, in each case, who are under a written obligation to keep such information confidential using standards of confidentiality not less restrictive than those required by this Agreement. All obligations of confidentiality shall survive termination or expiration of this Agreement.

17. To the extent that SEVEN STATES assists MEMBER with soliciting responses to a request for proposals, request for information or other similar procurement document, SEVEN STATES further agrees, to the extent permitted by applicable law, to comply with any limitations on the use of the responding parties' confidential information that SEVEN STATES and MEMBER specify in the applicable request for proposals, request for information or other similar document.

MEMBER agrees that Seven States may contact vendors, the Tennessee Valley Authority, state agencies, and other associated funding and/or administrative entities on MEMBER's behalf to obtain further information in connection with the Services, but shall not enter into any contracts or other binding legal obligations on behalf of MEMBER.

18. This Agreement may be executed in multiple counterparts and by electronic (or facsimile) signature, each of which shall be deemed an original and all of which together shall constitute one instrument.

*(Remainder of page intentionally left blank.)*

**ACCEPTED BY:  
SEVEN STATES POWER CORPORATION**

By: Betsey Kirk McCall Date: 12/1/2022  
(Signature)

Betsey Kirk McCall  
(Print Name)

Its: President & CEO  
(Title)

**AUTHORIZATION BY:  
THE CITY OF HUNTSVILLE ELECTRIC UTILITY BOARD**

By: Wes Kelley Date: Dec 5, 2022  
(Signature)

Wes Kelley  
(Print Name)

Its: President & CEO  
(Title)



## **EXHIBIT A - SCOPE OF WORK ADDENDUM**

This Scope of Work Addendum is executed by Seven States Power Corporation ("Seven States") and The City of Huntsville Electric Utility Board ("Member") as of the dates indicated below; and it identifies a scope of consulting services which Seven States will perform for Member (the "Services") under and pursuant to that certain Agreement for Consulting Services between Seven States and Member, dated December 5, 2022 (the "Agreement"). The terms of the Agreement are incorporated herein by reference as applicable to the performance of the Services.

### **Scope**

For the purposes of this Scope, the project is defined as the deployment of DC fast charging equipment and related services to a specific site per the technical requirements of the Fast Charge Network funding program administered by TVA and the participating state agencies (the "Project"). Seven States' role includes three primary components at each Project site: 1) project management, 2) equipment procurement services, and 3) grant reporting services, ("Services") as detailed below.

### **Project Management**

Seven States is qualified as a services provider under the TVA and participating state agencies' DC Fast Charge Network Program. Seven States provides project preparation and infrastructure planning, site selection support, environmental evaluations, site readiness coordination including project layout, site renderings and preconstruction support, contractor bid services support, site make-ready coordination, and the coordination of equipment installation and commissioning services.

### **Equipment Procurement Services**

Seven States is qualified as an equipment provider under the TVA and participating state agencies' DC Fast Charge Network Program. Seven States shall 1) identify suppliers of equipment that meet minimum technical specifications of the Project and 2) upon Member's approval, procure and coordinate delivery to Member per **Exhibit B**.

### **Grant Reporting Services**

Seven States will facilitate station usage and gross income generated reporting on an annual basis for a period of five (5) years from the date of commercial operation.

**Payment**

Services for each Project shall be billed at a one-time fixed fee of twenty thousand dollars (\$20,000) and payable within thirty (30) days of executing this Agreement. Payment for DC fast charging equipment and related services shall be billed in accordance with the terms listed in **Exhibit B**.

**Additional Services**

Additional services are available (including but not limited to specialized engineering studies for project site or specific design drawings for the project) and will be scoped via a separate agreement with third parties and priced at cost plus eighteen percent (18%).

**SEVEN STATES POWER CORPORATION**

By: Betsey Kirk McCall Date: 12/1/2022  
(Signature)

Betsey Kirk McCall  
(Print Name)

Its: President & CEO  
(Title)

**THE CITY OF HUNTSVILLE ELECTRIC UTILITY BOARD**

By: Wes Kelley Date: Dec 5, 2022  
(Signature)

Wes Kelley  
(Print Name)

Its: President & CEO  
(Title)

## **EXHIBIT B – ADDITIONAL TERMS APPLICABLE TO PROCUREMENT SERVICES**

This Exhibit only applies if procurement services are a component of the Services; and only apply to such procurement Services.

### **Placement of Orders.**

Purchase of Equipment. Seven States will procure equipment and other tangible personal property (herein "Equipment") for Member only after Member has delivered to Seven States a binding, written purchase order specifying the make, model number, and other descriptive information reasonably required by Seven States, along with the requested delivery schedule (which shall be a date that is no less than sixty (60) days after the date of the purchase order), and Member's purchase of Equipment is subject to all of the terms and conditions contained in this Agreement. Any additional printed terms and conditions in Member's purchase order conflicting with, varying or adding to the terms and conditions of this Agreement, shall be of no force and effect, unless the parties hereto agree in writing, in advance, to accept such terms and conditions.

Acceptance of Purchase Orders. All purchase orders and modifications to purchase orders are subject to acceptance or rejection by Seven States in its sole discretion. No purchase order shall be binding upon Seven States unless and until so accepted in writing by Seven States. Seven States agrees to use commercially reasonable efforts to notify Member of its acceptance or rejection of Member's order within ten (10) business days after receipt thereof. Any purchase order accepted by Seven States is referred to in this Agreement as, an "Accepted Order." Unless otherwise specified, Accepted Orders are non-refundable and non-exchangeable. In no event may Member rescind an Accepted Order.

Payment of Purchase Orders. Accepted Orders will be invoiced at Seven States' notice of shipment to Member and payment shall be due upon receipt of invoice. Member's failure to pay the total invoice amount when due may result in a late fee equal to 1.5% per month of any amount that is past due.

### **Refusal of Purchase Orders.**

Seven States may withhold shipments to Member if Member is in violation of its payment obligations or otherwise is in material breach of this Agreement.

## **Delivery.**

Shipping Costs; Terms. All shipping, unless otherwise agreed to by the Parties in writing, shall be FOB Seven States' point of shipment. Except to the extent expressly stated in an Accepted Order, Seven States' prices do not include any freight, storage, insurance, taxes, excises, fees, duties or other government charges related to the goods; and Member shall be responsible for all costs of shipping, transportation, insurance, warehousing, and other charges and costs associated with shipment of the Equipment to Member. All shipping dates are approximate and are based upon prompt receipt of all necessary information from Member. In no event shall Seven States be liable for any costs related to delay in delivery of the Equipment.

Transfer of Title; Timing. Title to the Equipment will transfer upon the last to occur of (i) payment for the Equipment, or (ii) delivery to the location requested by Member; however, risk of loss and damage to the Equipment (and the obligation to insure same) shall pass to Member upon the delivery of such Equipment to the location requested by Member. Seven States shall use commercially reasonable efforts to deliver Equipment ordered by Member on the scheduled delivery date. All claims for non-conforming shipments, must be made in writing to Seven States within twenty (20) days of actual receipt by Seller. Any such claims not made within such period shall be deemed waived and released.

Substitutions. Seven States shall have the right to make substitutions and modifications to Equipment and in the specifications of Equipment to be delivered under the terms of any applicable purchase order, provided that such substitutions or modifications will not materially affect overall Equipment form, fit, function or safety specifications.

## **Provisions Relating to Shipments in Lots.**

In the case of purchases of Equipment in separate lots, Member may only refuse such portion of a lot or shipment that fails to comply with the requirements of these terms. Member may not refuse to receive any lot or portion thereof for failure of any other lot or portion thereof to be delivered or to comply with these terms.

**Taxes, Duties, Etc.**

All amounts due to Seven States under this Agreement and/or any applicable purchase order are net of any duties, any sales, use, excise, value-added, withholding, or similar tax of any kind and any and all other fees and charges of any nature (collectively, "Taxes") imposed by the United States or any foreign, state or local governmental entity or instrumentality thereof on the purchase, shipment, use or sale of the Equipment by or to Member, other than taxes measured by Seven States' income, corporate franchise, or personal property ownership. Where applicable, Seven States shall bill Member for the full amount of such Taxes and shall include such amount as a separate line item on the invoice(s) sent to the Member; provided that, Seven States' failure to so bill the Member shall not relieve Member from the obligation to pay any Tax described in this Section.

**Warranty.**

The Equipment is covered only by the terms of any warranty, if any, that is extended by the manufacturer of same, and Seven States will assign such warranty to Member, to the extent such warranty is assignable. Otherwise, SEVEN STATES MAKES NO WARRANTY WITH RESPECT TO THE PERFORMANCE OF THE EQUIPMENT, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. SEVEN STATES EXPRESSLY DISCLAIMS ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SEVEN STATES DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF EQUIPMENT.





# Seven States-HU DCFC Agreement 2022

Final Audit Report

2022-12-05

Created:	2022-12-05
By:	Melanie McClure (melanie.mcclure@hsvutil.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA5-o7igMijG69-ianrCdM8nbB7uz6s2aU

## "Seven States-HU DCFC Agreement 2022" History

-  Document created by Melanie McClure (melanie.mcclure@hsvutil.org)  
2022-12-05 - 1:04:23 PM GMT
-  Document emailed to Wes Kelley (wes.kelley@hsvutil.org) for signature  
2022-12-05 - 1:06:25 PM GMT
-  Email viewed by Wes Kelley (wes.kelley@hsvutil.org)  
2022-12-05 - 6:05:05 PM GMT
-  Document e-signed by Wes Kelley (wes.kelley@hsvutil.org)  
Signature Date: 2022-12-05 - 6:06:19 PM GMT - Time Source: server
-  Agreement completed.  
2022-12-05 - 6:06:19 PM GMT

**ATTACHMENT C**

**MSSA accepted by:**

Name: Joe Gehrdes

Date: 2024-02-19 07:07:48 PST

Email: joe.gehrdes@hsvutil.org

Phone: +12565351386

Address: P.O. Box 2048, Huntsville Alabama, 35804, United States

Organization: Huntsville Utilities

Org ID: ORG37819

**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 THE APPLICABLE CHARGEPOINT ENTITY OR ENTITIES (“CPI”) WHICH CAN BE FOUND IN SECTION 11.4 BELOW. 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 earliest of (a) the effective date of Subscriber's initial quote for the ChargePoint Station and/or ChargePoint Services associated with this Agreement; (b) the date that Subscriber electronically accepts this Agreement, or (c) the date of Subscriber's first use of the ChargePoint Services.

**2.13 "Intellectual Property Rights"** means all intellectual property rights, including, without limitation, patents, patent applications, patent rights, trademarks, trademark applications, trade names, service marks, service mark applications, copyrights, copyright applications, franchises, licenses, inventories, know-how, trade secrets, Subscriber lists, proprietary processes and formulae, all source and object code, algorithms, architecture, structure, display screens, layouts, inventions, development tools

and all documentation and media constituting, describing or relating to the above, including, without limitation, manuals, memoranda and records.

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

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

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

**2.17** *“Provisioning”* means activating Charging Stations, warrantees and 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. Each Cloud Plan may be referred to as a “Subscription”.

**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** *“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) use or permit use, by an act or omission, ChargePoint's trademarks or other intellectual property in any manner that degrades, disparages or reflects adversely on ChargePoint or its business or reputation or that would be detrimental to the ChargePoint trademarks or their associated goodwill;

(j) 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;

(k) 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;"

(l) 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;

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

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

(o) 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.** If Subscriber is invoiced for the Services, Subscriber shall pay all Subscription Fees within thirty (30) days of its receipt of CPI's invoice. All payments shall be made in U.S. Dollars (or, if Subscriber is located in Canada, Canadian Dollars) by check, wire transfer, ACH payment system or other means approved by CPI or if applicable, as described in CPI's credit card policy. Customer may not offset any amounts due to CPI hereunder against amounts due to Customer under this Agreement or any other agreement. 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 Agreement, all payment obligations under this Agreement 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 attorneys' fees and other expenses reasonably incurred by CPI in the collection of any



late payments. 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 Agreement, (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 may utilize the Subscriber Marks to advertise that Subscriber is using the ChargePoint Services. The foregoing license includes a perpetual and irrevocable right of CPI to reproduce, adapt, modify, translate, publicly perform, publicly display and distribute all Subscriber Content and Services submitted, posted or displayed by Subscriber in the ChargePoint Services, solely for the purpose of enabling CPI to operate, market and promote the ChargePoint Services, and to index and serve such Subscriber Content and Services as search results through ChargePoint Services. CPI shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable perpetual license to use or incorporate in the ChargePoint Services any suggestions, enhancement requests, recommendations or other feedback provided by Subscriber or Subscriber 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; or

(vi) on any Charging Station that, after ten (10) days' written notice from ChargePoint, continues to malfunction or is otherwise improperly maintained in a manner that ChargePoint reasonably determines reflects poorly on ChargePoint or is likely to cause harm to ChargePoint's brand, reputation or business. If any Charging Station continues to malfunction or is otherwise improperly maintained as such, in addition to any other remedies available to it under this Agreement or under applicable law, ChargePoint shall have the right to have the Charging Station not discoverable or visible by the general public, including but not limited to ChargePoint account holders, on any interface (e.g., mobile application) that accesses the ChargePoint Network.

(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) **REMOVAL OF CPI MARKS FROM SUBSCRIBER CHARGING STATIONS.** If at any time Subscriber fails to comply with any of the prohibitions set forth in Section 7.5(b) or any restrictions set forth in Section 5.4, ChargePoint shall have the right, in addition to any other remedies available to it under this Agreement or under applicable law, upon five (5) days' written notice to Subscriber, to itself or through a third-party representative, without notice to or additional permission from Subscriber, enter Subscriber's premises for the purpose of removing or covering any or all CPI Marks, which may include covering the Subscriber Charging Station in its entirety.

(e) **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, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT. WITHOUT LIMITING THE FOREGOING, CPI DOES

NOT WARRANT THAT (A) SUBSCRIBER'S USE OF THE CHARGEPOINT SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, FREE FROM ERROR, OR MEET SUBSCRIBER'S REQUIREMENTS; (B) ALL CONTENT AND OTHER INFORMATION OBTAINED BY SUBSCRIBER FROM OR IN CONNECTION WITH THE CHARGEPOINT SERVICES WILL BE ACCURATE AND RELIABLE; (C) ALL DEFECTS IN THE OPERATION OR FUNCTIONALITY OF THE CHARGEPOINT SERVICES WILL BE CORRECTED. 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 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 AGREES TO INDEMNIFY AND HOLD HARMLESS THE UNDERLYING CARRIER AND ITS OFFICERS, EMPLOYEES, AND AGENTS AGAINST ANY AND ALL CLAIMS, INCLUDING WITHOUT LIMITATION CLAIMS FOR LIBEL, SLANDER, OR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH, ARISING IN ANY WAY, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH USE, FAILURE TO USE, OR INABILITY TO USE THE WIRELESS SERVICES EXCEPT WHERE THE CLAIMS RESULT FROM THE UNDERLYING CARRIER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THIS INDEMNITY WILL SURVIVE THE TERMINATION OF THE AGREEMENT. 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 ninety (90) days from the date the subscription plan is invoiced. Upon expiration of the original term, this Agreement will renew automatically for the successive term originally purchased at the list price applicable thereto, subject to increases 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. Notwithstanding the foregoing, there shall no pro-rata refunds allowed on automatic renewals for plans of multiple years. Renewals of Cloud Plans will commence on the date of the expiration of the Subscription being renewed. Each Subscriber Cloud Plan shall continue for the applicable duration thereof, unless this Agreement is terminated earlier in accordance with its terms. If Subscriber has elected or is required, as the case may be, to pay by credit card as provided in this Agreement or if applicable, as described in CPI's credit card policy, the renewal will be charged to Subscriber's payment method (credit card) on file, which may include any payment method automatically updated by Subscriber's issuing bank. If Subscriber's credit card is declined, invalid, or payment is not made by the issuer of Subscriber's credit card on Subscriber's Subscription Date, without further notice CPI reserves the right to automatically recharge the payment method until payment is received, the payment method is updated, or the Service is discontinued for nonpayment.

**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.** Subscriber hereby agrees to indemnify, defend and hold CPI, its officers, directors, agents, affiliates, distribution partners, licensors and suppliers harmless from and against any and all claims, actions, proceedings, costs, liabilities, losses and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Claims") suffered or incurred by such indemnified parties resulting from or arising out of Subscriber's actual or alleged use (directly, or through a grantee of Rights by Subscriber) of the ChargePoint Services, ChargePoint or Subscriber Content and Services. Subscriber will cooperate as fully as reasonably required in the defense of any claim. CPI reserves the right, at its own expense, to assume the exclusive defense and control of any matter subject to indemnification by Subscriber.

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

**11.1 AMENDMENT OR MODIFICATION.** CPI reserves the right to modify this Agreement from time to time. CPI will provide notice of each such modification to Subscriber. Subscriber's continued use of the ChargePoint Services following such notice will constitute an acceptance of the modified Agreement.

**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 GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION.** The ChargePoint entity entering into this Agreement, the address to which Subscriber should direct notices under this Agreement,

the governing law, and place of jurisdiction, shall be determined according to where the Subscriber is domiciled:

If Subscriber is domiciled in:	The CPI Entity entering into this Agreement is:	Notices should be addressed to:	Governing law is:	Place of jurisdiction:	Forum:
The United States of America	ChargePoint, Inc., a Delaware corporation	Attn: Legal Department ChargePoint, Inc. 254 E Hacienda Ave Campbell, CA 95008	California and controlling United States federal law	Santa Clara, California, U.S.A.	Judicial Arbitration and Mediation Services, Inc. (JAMS)
Canada	ChargePoint Canada, Inc., a British Columbia corporation	Attn: Legal Department ChargePoint, Inc. 254 E Hacienda Ave Campbell, CA 95008	British Columbia and controlling Canadian federal law	Vancouver, British Columbia, Canada	ADR Institute of Canada

This Agreement, and any disputes related to this Agreement, will be governed by the applicable Governing Laws above, without regard to conflicts of laws rules or the United Nations Convention on the International Sale of Goods.

Except with respect to any matter relating to Subscriber’s violation of the intellectual property rights of CPI, any disputes, actions, claims or causes of action arising out of or in connection with this Agreement shall be submitted to and finally settled by arbitration using the English language in accordance with the Arbitration Rules and Procedures of the applicable Forum above then in effect, by one or more commercial arbitrator(s) with substantial experience in the industry and in resolving complex commercial contract disputes. Judgment upon the award so rendered may be entered in a court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. All claims shall be brought in the parties’ individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. With respect to any matter relating to the intellectual property rights of CPI, such claim may be litigated in a court of competent jurisdiction. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys’ fees and costs.

Notwithstanding the foregoing, each party shall have the right to institute an action in any court of proper jurisdiction for injunctive relief.

**11.5 NOTICE REGARDING CLAIMS TO REGULATORY COMPLIANCE MECHANISMS.** The use of certain ChargePoint Charging Stations may be eligible to generate clean fuels credits, low-carbon fuel standard credits, renewable fuels credits, emissions reduction units, carbon offsets, allowances, renewable fuel and/or obligation certificates, or similar regulatory compliance instruments, collectively (“Regulatory Compliance Mechanisms”), used to comply with applicable federal, state, provincial, international or regional emissions, low-carbon fuel, and/or renewable fuel compliance programs. CPI and

Subscriber may be eligible to claim title to Regulatory Compliance Mechanisms, however, only one Party can claim title. Should Subscriber choose to claim regulatory title, assuming Subscriber may be eligible to do so, Subscriber must opt-in to the applicable program and fulfill all ongoing administrative and reporting obligations required of program participants, including recurring verification and/or auditing requirements. CPI intends to claim title to applicable Regulatory Compliance Mechanisms, assuming CPI may be eligible to do so; however, CPI will not claim title to specific Regulatory Compliance Mechanisms that Subscriber has opted to claim. Subscriber agrees that it will provide CPI with written notice of its intent to claim specific Regulatory Compliance Mechanisms within ten (10) days of the Effective Date. If Subscriber does not currently intend to claim regulatory title, but desires to do so at any time in the future, Subscriber may, by providing written notice to CPI, elect to claim title to Regulatory Compliance Mechanisms resulting from the use of ChargePoint Charging Stations 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 Regulatory Compliance Mechanisms and hereby designates that right to CPI. All notices shall be provided by email to CPI at [lcsnotification@chargepoint.com](mailto:lcsnotification@chargepoint.com).

**11.6 NOTICE REGARDING RIN DATA.** For Subscriber's located in the United States, CPI will participate in an application to the U.S. Environmental Protection Agency ("EPA") to permit vehicle charging data ("Charging Data") collected by CPI from centrally networked charging stations to be utilized in a process to generate Renewable Identification Numbers ("RIN") under the Renewable Fuel Standard. CPI must establish its exclusive right to utilize the Charging Data and the associated environmental attributes underlying the charging events represented by the Charging Data (Charging Data and such environmental attributes referred to collectively as, the "RIN Data") for the purposes of RIN generation. Subscriber confirms that it will not pursue utilizing RIN Data for the purposes of RIN generation and that, as between Subscriber and CPI, CPI has the exclusive right to use the RIN Data for the purpose of RIN generation.

**11.7 NOTICES.** Other than the notices required in Sections 11.5 and 11.6, any notice required or permitted by this Agreement shall be sent (a) if by CPI, via electronic mail to the address indicated by Subscriber in Subscriber's ChargePoint Services account; or (b) if by Subscriber, via electronic mail to [mssa@chargepoint.com](mailto:mssa@chargepoint.com).

**11.8 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.

**11.9 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.

**11.10 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. CPI may assign its rights and obligations under this Agreement.

**11.11 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.

**11.12 ENTIRE AGREEMENT.** This Agreement (including the attached Exhibits) contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes and cancels all previous and contemporaneous agreements, negotiations, commitments, understandings, representations and writings. All purchase orders issued by Subscriber shall state that such purchase orders are subject to all of the terms and conditions of this Agreement, and contain no other term other than the type of Cloud Plan, the number of Charging Stations for which such Cloud Plan is ordered, the term of such Cloud Plans and applicable Subscription Fees. To the extent of any conflict or inconsistency between the terms and conditions of this Agreement and any purchase order, the Agreement shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in any other documentation shall be incorporated into or form any part of this Agreement, and all such purported terms and conditions shall be null and void.

**11.13 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.

**11.14 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.

**11.15 COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute but one and the same document.

**11.16 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. It is the express wish of the Parties that this Agreement and all related documents, including notices and other communications, be drawn up in the English language only. Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant, y compris les avis et les autres communications, soient rédigés et signés en anglais seulement.



**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 monthly , provided that the amount due to Subscriber hereunder is at least fifty U.S. dollars (50) (or, if Subscriber is located in Canada fifty Canadian dollars). 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 electronic payment. In order to facilitate such payments,

Subscriber agrees to maintain Subscriber's current bank information, into Subscriber's ChargePoint Services (customer facing portal), to enable electronic remittance of the Net Session Fees. If the Subscriber requests payment in a manner other than electronic payment (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 assessable based on Charging Sessions 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. CPI expressly undertakes no liability with respect to such an agreement and Rights Grantor fully and unconditionally releases CPI from any liability arising out of such an agreement. Further Rights Grantor agrees to indemnify and hold CPI, its officers, directors, agents, affiliates, distribution partners, licensors and suppliers harmless from and against any and all claims, actions, proceedings, costs, liabilities, losses and expenses (including, but not limited to, reasonable attorneys’ fees) (collectively, “Claims”) suffered or incurred by such indemnified parties resulting from or arising out of such agreement.