

DONATION AGREEMENT

This Donation Agreement (this "Agreement") is entered into as of the __ day of ____, 2017, by and between ChargePoint, Inc., a Delaware corporation, with its principal office located at 254 E. Hacienda Ave., Campbell, CA 95008 ("ChargePoint") and [REDACTED], a [REDACTED], with its principal office located at [REDACTED] ("Site Host"). ChargePoint and Site Host are each sometimes referred to individually herein as, a "Party", and collectively as, the "Parties".

RECITALS

WHEREAS, ChargePoint desires to donate to Site Host one or more electric vehicle charging stations and related equipment (the "Donated Stations"), as more fully described in Exhibit "A," to Site Host and Site Host desires to accept such donation.

WHEREAS, the Donated Stations are being provided pursuant to the grant program through the Monterey Bay Air Resources District (the District).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the Parties hereby agree as follows.

1. Award of Donated Stations; Access to General Public.

(a) ChargePoint shall deliver the Donated Stations to the contact listed on Exhibit "B," for installation at the locations described in Exhibit "B", at no cost to Site Host. In addition, ChargePoint shall provide, during the Commitment Period (as defined in Section 1(b)), access to its cloud services to Site Host through the donation to Site Host of a subscription to the ChargePoint Commercial Plan for use solely with the Donated Stations, as well as a subscription to ChargePoint's service and support plan known as ChargePoint Assure (the "Warranty") described in Exhibit "D." In the event Site Host has not already executed a Master Services and Subscription Agreement with ChargePoint, such an agreement will need to be executed in order for Site Host to obtain access to the ChargePoint Commercial Plan

(b) Site Host shall keep the Donated Stations operational, and make them accessible by the general public, for a period of five (5) years commencing on the date the Donated Stations are installed and made available to the general public for charging (the "Commitment Period"). Site Host may charge a reasonable fee for the use of the Donated Stations. Site Host shall permit ChargePoint to display the Donated Stations on its map of publicly available charging locations.

(c) As a part of Site Host's obligations under this Donation Agreement, Site Host agrees to keep the Donated Stations connected to the ChargePoint Network for a period of at least five years commencing on the date the Donated Stations are installed and activated on the ChargePoint Network.

(d) At its option, the District may file a UCC-1 form, identifying the Donated Stations, with the California Secretary of State in order to secure Site Host's performance under this Agreement. At the end of the Commitment Period, the District shall file a lien release (UCC-

3) with the California Secretary of State within ten working days. Site Host consents to the UCC-1 filing on the Donated Stations and shall reasonably cooperate with the District in the filing thereof.

2. Shipment and Delivery. ChargePoint will pay for the cost of standard delivery charges of the Donated Stations to the location set forth in Exhibit B. ChargePoint shall choose the method by which the Donated Stations are to be delivered. Title and risk of loss shall pass to Site Host upon delivery to the location set forth in Exhibit B. If Site Host desires expedited delivery, Site Host will be responsible for the payment of all delivery charges.

3. Installation.

(a) Site Host shall install the Donated Stations at the location or locations described in Exhibit B, provided that the Donated Stations must be installed in a manner that will make them readily available for use to the general public.

(b) The Donated Stations will be installed by a ChargePoint approved installer (the "Approved Installer") as defined in Exhibit B. Exhibit C sets forth the scope of work for the installation services and the amount, if any, that Site Host shall pay for such installation.

(c) Site Host shall be responsible for contracting with the Approved Installer, arranging for the installation of the Donated Stations, and paying all costs for the installation of the Donated Stations. Unless specifically agreed in writing, only the Approved Installer may install Donated Stations.

(d) In the event that the Donated Stations have not been installed and activated on the ChargePoint Network within forty five (45) days of the date of this Agreement, ChargePoint reserves the right to reclaim the Donated Stations. If Site Host is unable to comply with its agreed upon installation schedule with the Approved Installer, and requires a change in installation schedule, Site Host shall cover the costs and expenses, if any, of the Approved Installer for such changes

(e) The Donated Stations are not to be removed from their packaging by any person other than the Installer.

4. Warranty/Limitation of Liability. (a) **Warranty.** The Donated Stations will be covered by the Warranty during the Commitment Period. All applicable warranties with respect to the Donated Stations are set forth in the Warranty, and are hereby incorporated by reference into this Agreement. The Warranty shall be null and void in the event Site Host does not use the Approved to install the Donated Stations.

(b) **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 4, AND IN THE WARRANTY, CHARGEPOINT MAKES NO WARRANTY WITH RESPECT TO THE PERFORMANCE OF THE DONATED STATIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. CHARGEPOINT EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT

NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS BY THE DONATED STATIONS, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CHARGEPOINT DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF THE DONATED STATION.

(c) **Limitation of Liability.** (i) REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL CHARGEPOINT 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 DONATED STATION OR OTHERWISE OR BASED ON ANY EXPRESSED, IMPLIED OR CLAIMED WARRANTIES BY SITE HOST NOT SPECIFICALLY SET FORTH IN THIS ADDENDUM. BECAUSE SOME STATES OR JURISDICITONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY.

(ii) **SITE HOST'S SOLE REMEDY FOR ANY BREACH BY CHARGEPOINT OF ITS OBLIGATIONS OR WARRANTIES UNDER THIS AGREEMENT SHALL BE LIMITED TO, AT CHARGEPOINT'S OPTION, REPAIR OR REPLACEMENT OF THE DONATED STATIONS.**

(d) **Warranty Exclusions; Exclusive Remedies.** THE REMEDIES CONTAINED IN SECTION 4 ARE SITE HOST'S SOLE AND EXCLUSIVE REMEDIES AND ARE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES IT MAY HAVE AGAINST CHARGEPOINT WITH RESPECT TO THE PERFORMANCE OF THE DONATED STATIONS.

5. Access to the Public. All of the Donated Stations will be installed in a manner and in locations that make them available for access and use by the general public. The Donated Stations, and the facilities in which they are located, shall be kept clean and in good repair by Site Host. Site Host shall promptly call ChargePoint in order to arrange for the repair of any non-functioning Donated Stations. Without the prior written consent of ChargePoint, Site Host shall not install the Donated Stations in any location where it charges for parking.

6. Information Sharing. ChargePoint intends to share aggregated, anonymized data ("Data") regarding the use of the Donated Stations with the District. Site Host acknowledges and agrees that the Data may be used by the above-described entities for any purpose, including analyzing the public's use of the Donated Stations. Data shared with the District shall not include any personally identifiable information of any driver. ChargePoint shall protect all such information in accordance with applicable law. The District is an intended third party beneficiary under this Agreement.

7. Sale or Removal of the Donated Stations. Subject to the provisions of Section 13, if Site Host removes, assigns, sells or otherwise transfers without ChargePoint's prior written consent, the Donated Stations prior to the end of the Commitment Period, Site Host shall pay to ChargePoint an amount equal to the sum of (i) the fair market value of the Donated Station as of the date of this Agreement, (ii) the fair market value of a five year subscription to the ChargePoint Commercial Service Plan as of the date of this Agreement and (iii) the fair market value of a five year subscription to ChargePoint Assure as of the date of this Agreement.

8. No Amendment or Modification. No modification, amendment or waiver of this Agreement shall be effective unless pursuant to a writing executed by each of the Parties.

9. Waiver. A Party's failure at any time to require the other Party's performance of any obligation under this Agreement will in no way affect the full right to require such performance at any time thereafter. A Party's waiver of a breach of any provision of this Agreement will not constitute a waiver of the provision itself. A Party's failure to exercise any of its rights provided in this Agreement will not constitute a waiver of such rights. No waiver will be effective unless in writing and signed by an authorized representative of the non-breaching Party. Any such waiver will be effective only with respect to the specific instance and for the specific purpose given.

10. Applicable law. This Agreement will be construed, and performance will be determined, according to the laws of the State of California without reference to such state's principles of conflicts of law and the state and federal courts located in the County of Santa Clara, California, shall have exclusive jurisdiction over any claim arising under this Agreement.

11. Waiver of Jury Trial. Site Host and ChargePoint each hereby waive any right to jury trial in connection with any action or litigation arising out of this Agreement.

12. Severability. Except as otherwise specifically provided herein, if any term or condition of this Agreement or the application thereof to either Site Host or ChargePoint will to any extent be determined 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, Site Host and ChargePoint or circumstances other than those as to which it is determined to be invalid or unenforceable, will not be affected thereby.

13. Assignment. Site Host may not assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of ChargePoint; provided that Site Host may assign this Agreement in connection with the sale of substantially all of its assets or a merger; provided that the assignee agrees in writing to be bound by all of the provisions of this Agreement.

14. 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.

15. Term. This Agreement shall terminate upon the expiration of the Commitment Period.

[]

ChargePoint, Inc.

By:

By:

Name:

Name:

Title:

Title:

Address for Notices:

Address for Notices:

Exhibit “A”

List of Charging Stations and Equipment

Product Name	Product #	Quantity
ADA compliance: at least one ADA compliant van-accessible EVSE installment		1
ChargePoint Dual Head Bollard Mounted EV Charging Station	CT4021	4
R112(CA) EV Charging Station Tow-Away sign	“Provided by ChargePoint”	4
R113A(CA) No Parking Except for EV Charging sign	“Provided by ChargePoint”	4

Exhibit “B”

Shipping Information and Installation Location

1. Shipping Information

Street Address _____
City/ State/ Zip Code _____
Company Name _____
Contact Name _____
Contact Phone _____
Contact Email _____
Freight Terms _____
Storage Conditions _____

2. Installation Location

Street Address _____
City/ State/ Zip Code _____
Company Name _____
Contact Name _____
Contact Phone _____
Contact Email _____

3. Approved Installer

Company Name _____
Contact Name _____
Contact Phone _____
Contact Email _____

Exhibit “C”

**Installation Scope of Work
TO BE COMPLETED WITH SITE SPECIFIC INFORMATION**

- 1. Statement of Work**
- 2. Clarifications**
- 3. Excluded Items Outside of Agreement**
- 4. Overhead Map View**
- 5. Focused Installation View**
- 6. Site Design Layout**
- 7. Single Line Diagram**

[]

[PREFERRED INSTALLER]

By:

By:

Name:

Name:

Title:

Title:

Address for Notices:

Address for Notices:

Exhibit “D”

CHARGEPOINT ASSURE TERMS AND CONDITIONS OF SERVICE

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

1. **WHAT IS COVERED:** With ChargePoint Assure, ChargePoint agrees to do each of the following:
 - a. Ensure that all parts are provided and labor is performed, on-site if necessary, to correct any defect in the materials or workmanship of electric vehicle charging stations purchased from ChargePoint, Inc., or its representatives (“Charging Stations”) in a prompt and professional manner.
 - b. Provide remote, automated monitoring of your Charging Stations.
 - c. Perform triage with respect to any Charging Station that may be defective.
 - d. Coordinate all repairs necessary to have your Charging Station back up and running.
 - e. Ensure that you are provided response no later than two business days from the date ChargePoint becomes aware of an issue.
 - f. Begin onsite repairs within two business days from the delivery of any parts required to fix your Charging Station.
2. **WHAT IS NOT COVERED:** ChargePoint undertakes no responsibility with respect to repairing, replacing, monitoring or servicing anything other than your Charging Stations. This means, for example, that ChargePoint is not responsible for the physical mounting and electrical wiring of your Charging Stations or for the performance of any cellular or Wi-Fi repeaters or other devices installed in connection with your Charging Stations.
3. **CUSTOMER RESPONSIBILITIES:** In order to perform its obligations under ChargePoint Assure, ChargePoint needs your cooperation. Specifically, you agree to:
 - a. Provide reasonable access to ChargePoint or its designee as necessary for the performance of ChargePoint’s obligations.
 - b. Permit ChargePoint to access the Charging Stations remotely by maintaining a separately purchased Cloud Services subscription necessary for remote access.
 - c. Maintain your premises in accordance with all applicable laws, rules and regulations.
 - d. Keep the areas in which Charging Stations are located in a clean, safe and orderly condition, to at least the same standard as you customarily use to maintain the remainder of your premises.
 - e. Promptly notify ChargePoint of any suspected defect with a Charging Station.

4. **WHO IS ELIGIBLE FOR CHARGEPOINT ASSURE?:** ChargePoint Assure is only available to purchasers of Charging Stations who either: 1) use a ChargePoint Operations and Maintenance Partner (“O&M Partner”) to install their Charging Stations or 2) successfully complete a site validation as described below.
 - a. **ChargePoint O&M Partner Installation.** For information on how to contact a ChargePoint O&M Partner, please contact your ChargePoint sales representative or authorized ChargePoint reseller for more details.
 - b. **Site Validation:** If you do not use an O&M Partner to install your Charging Station, you still will be eligible for ChargePoint Assure after your installation has been validated by ChargePoint or an authorized third party. The purpose of the site validation is to ensure that your Charging Stations were installed correctly, in accordance with ChargePoint’s recommended specifications and operational requirements. Site validations require the payment of ChargePoint’s then current fee, charged on a “per site” basis. For these purposes, a “site” is defined as any group of Charging Stations whose circuits are terminated at the same power panel.
5. **EXCLUSIONS FROM COVERAGE:** ChargePoint’s obligations under ChargePoint Assure shall not apply to defects or service repairs resulting from the following:
 - a. Cosmetic damage such as scratches and dents.
 - b. Normal aging.
 - c. Abuse, vandalism, damage or other problems caused by accidents or negligence (including but not limited to physical damage from being struck by a vehicle), or use of the Charging Station in a way other than as specified in the applicable Charge Point documentation.
 - d. Installation, alteration, modification or relocation of the Charging Station that was not approved in writing by ChargePoint, performed by an O&M Partner or validated in the manner described above.
 - e. Use of the Charging Station with software, interfacing, parts or supplies not supplied by ChargePoint.
 - f. Damage as a result of extreme power surge, extreme electromagnetic field or any other acts of nature.

In addition ChargePoint’s obligations under ChargePoint Assure shall not apply to any Charging Station that was not installed by a ChargePoint O&M Partner or a ChargePoint certified installer pursuant to the provisions of Section 4 of these Terms and Conditions.
6. **CONTACT INFORMATION:** If at any time during the term of your coverage of ChargePoint Assure you believe you have a defective Charging Station, contact Customer Service at 1-877-850-4562 or support@chargepoint.com.
7. **SERVICE TERM:** If you comply with the installation requirements described in Section 4, you will receive, at no-cost, ChargePoint Assure coverage that will replace your standard ChargePoint Warranty and will last for the remainder of the standard Warranty period, if any. You may purchase extensions to your ChargePoint Assure coverage. The extension period will begin on the date your standard Exchange Warranty expires or, if applicable, the date that any extensions to ChargePoint Assure coverage that you

have previously purchased expire. Please contact your ChargePoint sales representative or authorized ChargePoint reseller for more details.

8. **PAYMENTS:** ChargePoint will send you an invoice for any extended ChargePoint Assure coverage that you order. Payment is due within thirty (30) days of the invoice date. All payments shall be made in U.S. Dollars and may be made by check, wire transfer, ACH payment system or other means approved by ChargePoint. Customer may not offset any amounts due to ChargePoint hereunder against amounts due to Customer under this Agreement or any other agreement. Fees payable to ChargePoint do not include any Taxes, and Subscriber is responsible for any and all such Taxes. All payment obligations under this Agreement are non-cancelable and non-refundable. 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. Customer will reimburse ChargePoint for attorneys' fees and other expenses reasonably incurred by ChargePoint in the collection of any late payments. If any amount owing by Customer under this Agreement is more than thirty (30) days overdue, ChargePoint may, without otherwise limiting ChargePoint's rights or remedies, (a) terminate this Agreement and (b) refuse to provide ChargePoint Assure coverage until ChargePoint has received payment in full.
9. **TRANSFERS:** Your ChargePoint Assure coverage applies only to the Charging Stations and installation site for which it was purchased. If you sell or otherwise transfer your Charging Stations, your ChargePoint Assure coverage may not be transferred without ChargePoint's prior written consent.
10. **REPLACEMENT PARTS AND STATIONS:** Replacement parts or charging stations provided by ChargePoint under ChargePoint Assure may be remanufactured or reconditioned parts or Charging Stations or, if the exact Charging Station is no longer manufactured by ChargePoint, a Charging Station with substantially similar functionality. All replaced parts and Charging Stations, whether under warranty or not, become the property of ChargePoint. Any replacement parts or Charging Stations so furnished will be covered by ChargePoint Assure for the remainder of your ChargePoint Assure coverage or ninety (90) days from the date of delivery of such replacement parts or Charging Stations, whichever is later.
11. **LIMITS ON LIABILITY:** This section limits ChargePoint's liability under ChargePoint Assure. Please read it carefully.
 - a. CHARGEPOINT IS NOT LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST BUSINESS, LOST DATA, LOSS OF USE, OR COST OF COVER INCURRED BY YOU ARISING OUT OF OR RELATED TO YOUR PURCHASE OR USE OF, OR INABILITY TO USE, THE CHARGING STATION, UNDER ANY THEORY OF LIABILITY, WHETHER IN AN ACTION IN CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL OR EQUITABLE THEORY, EVEN IF CHARGEPOINT KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE CUMULATIVE LIABILITY OF CHARGEPOINT FOR ALL

CLAIMS WHATSOEVER RELATED TO PERFORMANCE BY CHARGEPOINT OF ITS OBLIGATIONS UNDER CHARGEPOINT ASSURE WILL NOT EXCEED THE PRICE YOU PAID FOR CHARGEPOINT ASSURE. THE LIMITATIONS SET FORTH HEREIN ARE INTENDED TO LIMIT THE LIABILITY OF CHARGEPOINT AND SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

- b. Some states or jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.
12. **ARBITRATION:** These ChargePoint Assure Terms and Conditions of Service are to be construed according to the laws of the State of California, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict of law provisions that would require application of another choice of law. Any dispute arising from or relating to these ChargePoint Assure Terms and Conditions of Service shall be arbitrated in Santa Clara, California. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the parties agree, a mediator may be consulted prior to arbitration. All claims shall be brought in the parties' individual capacities, and not as a plaintiff or class member in any purported class or representative proceeding.
13. **AMENDMENT OR MODIFICATION:** These ChargePoint Assure Terms and Conditions of Service may not be amended or modified except pursuant to a writing executed by each of the parties.
14. **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.
15. **FORCE MAJEURE:** ChargePoint will not be liable for failure to perform any of its obligations hereunder due to causes beyond its reasonable control and occurring without its fault or negligence, including but not limited to fire, flood, earthquake or other natural disaster (irrespective of ChargePoint's condition of any preparedness therefore); war, embargo; riot; strike; labor action; any lawful order, decree, or other directive of any government authority that prohibits ChargePoint from performing its obligations under this Agreement; material shortages; shortage of transport; and failures of suppliers to deliver material or components in accordance with the terms of their contracts.
16. **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.
17. **ASSIGNMENT.** You may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of ChargePoint. In the event of any purported assignment in breach of this Section 17, ChargePoint shall be

entitled, at its sole discretion, to terminate these ChargePoint Assure Terms and Conditions of Service by providing written notice to you. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. ChargePoint may assign its rights and obligations under this Agreement.

18. **ENTIRE AGREEMENT.** This Agreement 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. To the extent of any conflict or inconsistency between these ChargePoint Assure Terms and Conditions of Service and any purchase order, the Agreement shall prevail.
19. **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.