

DONATION AGREEMENT

This Donation Agreement (this "Agreement") is entered into as of the 7th day of February 2020, by and between ChargePoint, Inc., a Delaware corporation, with its principal office located at 254 E. Hacienda Ave., Campbell, CA 95008 ("ChargePoint") and Town of Vail, a Municipal Government, with its principal office located at 75 South Frontage Road West, Vail, CO 81657 ("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 ALT Fuels Colorado Electric Vehicle Direct Current Fast-Charging Corridors Grant Program ("Colorado Grant") through the Colorado Energy Office ("CEO") in order to increase the number and access to electric vehicle charging stations along major Colorado transportation corridors.

WHEREAS, this Agreement is subject to and contingent upon funding by the CEO and Colorado Grant.

WHEREAS, this Agreement is subject to and contingent upon the CEO's acceptance of the pending amendment to the Colorado Grant between the CEO and ChargePoint incorporating the Two-Phase Solution, referenced in Section 3(f) below, among other proposed amendments.

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". 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) The Donated Stations will be installed by a ChargePoint approved installer (the "Approved Installer") as defined in Exhibit B. The Approved Installer shall perform all

engineering, construction, electrical make-ready, and installation work on the Donated Stations (“Station Installation”). Unless specifically agreed to in writing, only the Approved Installer may perform Station Installation on the Donated Stations. ChargePoint shall execute agreements with Approved Installer related to the Station Installation and may also execute agreements with the local utility for any applicable utility connection fee. Pursuant to Section 3 of this Agreement, Site Host shall pay for costs and fees associated with Station Installation, including, but not limited to, Approved Installer costs and fees, utility connection fees, and other reasonable costs/fees necessary to perform the Station Installation (“Station Installation Costs”). The estimated Station Installation Costs are outlined in Exhibit C.

(c) Site Host shall keep the Donated Stations operational, and make them accessible by the general public, for a period of six (6) 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.

(d) 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 six years commencing on the date the Donated Stations are installed and activated on the ChargePoint Network.

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) ChargePoint will coordinate with Approved Installer and Site Host for Station Installation 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) ChargePoint and Site Host are responsible for supervising the performance of the Approved Installer for Station Installation. ChargePoint shall schedule the date and time of construction and installation activities. Such schedule shall be binding unless a party provides at least twenty (20) business days’ prior written notice of any need to reschedule. Approved Installer shall submit detailed plans and specifications relating to Station Installation to Site Host, subject to Site Host’s reasonable approval. Site Host shall either approve or comment upon the submitted plans and construction schedule within five (5) business days. Failure by Site Host to comment upon the submitted plans and construction schedule shall be deemed approval of such plans and construction schedule. No work will begin until all applicable permits and certifications have been obtained. Approved Installer will perform Station Installation, including, to the extent applicable,

the hiring and coordination of all vendors and contractors; the installation of electrical equipment, utility lines, hardware; site preparation, trenching, repaving, and landscaping; and installation of signage. Site Host recognizes that Donated Stations will require the installation of dedicated electrical service, supporting concrete pads, protective bollards and other associated equipment necessary for the safe and effective provision of charging services to EV Drivers. Approved Installer will obtain from applicable governmental authorities all permits or other approvals required to install the Charging Stations, and Site Host will reasonably cooperate on request with Approved Installer's efforts to do so. Once Station Installation is complete, that Donated Station is the personal property of Site Host. Station Installation Costs will be covered by Site Host pursuant to the terms of Section 3(c).

(c) Site Host shall deposit \$200,091 into an escrow account ("Escrow Funds") at least sixty (60) days prior to the Commencement of Construction (as defined below). Escrow Funds—and Colorado Grant funds, if any—shall be used to cover all Station Installation Costs and Site Host shall be responsible for any costs in excess of the Station Installation Costs. Once Station Installation has reached Substantial Completion (as defined below), the Escrow Funds shall be released to ChargePoint; provided that, if the Escrow Funds are in excess of the Site Installation Costs, such excess Escrow Funds shall be returned to Site Host at the time of Substantial Completion. If required by ChargePoint, Site Host, at its sole cost and prior to the Commencement of Construction, shall also furnish a payment bond as security for the faithful payment of the Approved Installer costs.

Site Host acknowledges that its failure to deposit Escrow Funds shall constitute a material breach of this Agreement. Should Site Host fail to deposit the Escrow Funds, ChargePoint shall cover the Station Installation Costs and Site Host shall be fully liable to ChargePoint for such Station Installation Costs. If ChargePoint required Site Host to furnish a payment bond pursuant to this Agreement, ChargePoint may submit a claim to Site Host's surety to cover the Station Installation Costs.

As used in this Agreement: (i) "Commencement of Construction" means the start of material on-site work at the installation locations described in Exhibit "B" and (ii) "Substantial Completion" means the completion of all permitted work pursuant to the local municipality's inspection process.

(d) In the event that the Donated Stations have not been installed and activated on the ChargePoint Network within one hundred eighty (180) 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 Approved Installer.

(f) ChargePoint will require access to Site Host's property to replace and upgrade stations during the Commitment Period. ChargePoint will contact Site Host to coordinate the timing for replacement and upgrade of the Donated Stations by an Approved Installer. The station upgrade costs will be ChargePoint's sole responsibility. The station upgrade will cause minimal disruption to the Site Host's operation as no additional construction, trenching, repaving, or landscaping will be required.

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 Installer 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 JURISDICTIONS 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 twenty-four (24) hours per day, seven (7) days a week. 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 CEO. 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 CEO shall not include any personally identifiable information (as defined and set forth in §24-72-501(2), Colorado Revised Statutes ("C.R.S."), and §6-1-713(2)(b), C.R.S.) of any driver. ChargePoint shall protect all such information in accordance with applicable law. The CEO 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 six year subscription to the ChargePoint Commercial Service Plan as of the date of this Agreement, (iii) the fair market value of a six year subscription to ChargePoint Assure as of the date of this Agreement, and (iv) the full value of the scope of work for the installation services set forth in Exhibit C.

8. Performance/Termination. During the Commitment Period, after construction is complete and Donated Stations are fully operational, if ChargePoint for any reason is unable to perform its obligations or carry out its duties and responsibilities set forth in this Donation Agreement ("Duties and Responsibilities"), ChargePoint shall immediately notify Site Host and the Colorado Energy Office, Attention: Zachary Owens, 1580 Logan Street, Suite 100, Denver, Colorado 80203 (the "CEO") of its inability to perform such Duties and Responsibilities.

(i) Upon notification by ChargePoint to Site Host and the CEO, this Donation Agreement shall be terminated.

(ii) Upon termination of this Donation Agreement, Site Host and CEO will enter into a new agreement.

9. Insurance. Throughout the term of this Agreement, Site Host shall obtain and maintain insurance as outlined in Exhibit "E" attached hereto.

10. 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.

11. 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.

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

13. 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.

14. 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.

15. 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.

16. 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.

17. Term. This Agreement shall terminate upon the expiration of the Commitment Period or at such time as the Colorado Grant or the CEO no longer provides funding or terminates the program.



Town of Vail

By: *Scott Robson*
Name: *Scott Robson*
Title: *Town Manager*
Address for Notices:

Exhibit "A"

ChargePoint, Inc.

DocuSigned by:
Rex S. Jackson
41105F986370476...
Name: Rex S. Jackson
Title: CFO
Address for Notices:

List of Charging Stations and Equipment

Product Name	Product #	Quantity
Express 250*	CPE250C-625-CCS1-CHD	4
Express Plus*	EXPP-CCS1C-CHD	4

*ChargePoint and its Approved Installer will initially install the Express 250 DC fast charging station, which will later be replaced and upgraded with the Express Plus DC fast charger. While the Site Host agrees to keep both the Express 250 and Express Plus charging stations operational and accessible by the general public for the entire Commitment Period, only the Express Plus DC fast charging station will be Donated to the Site Host. ChargePoint will retain ownership of the Express 250 stations and remove them from the Site Host's property upon upgrading the site to Express Plus.

Exhibit "B"

Shipping Information and Installation Location

1. Shipping Information

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

2. Installation Location

Street Address: 395 S Frontage Rd W
City/ State/ Zip Code: Vail, CO, 81657
Company Name: Town of Vail – Lion’s Head Parking Structure P1
Contact Name: Kristen Bertuglia
Contact Phone: (970) 477-3455
Contact Email: KBertuglia@vailgov.com

3. Approved Installer

Company Name: Lane Valente Industries
Contact Name: Michael Rodriguez – Director of Special Projects, Electrical
Contact Phone: (832) 741-7974
Contact Email: mrodriguez@lviusa.com

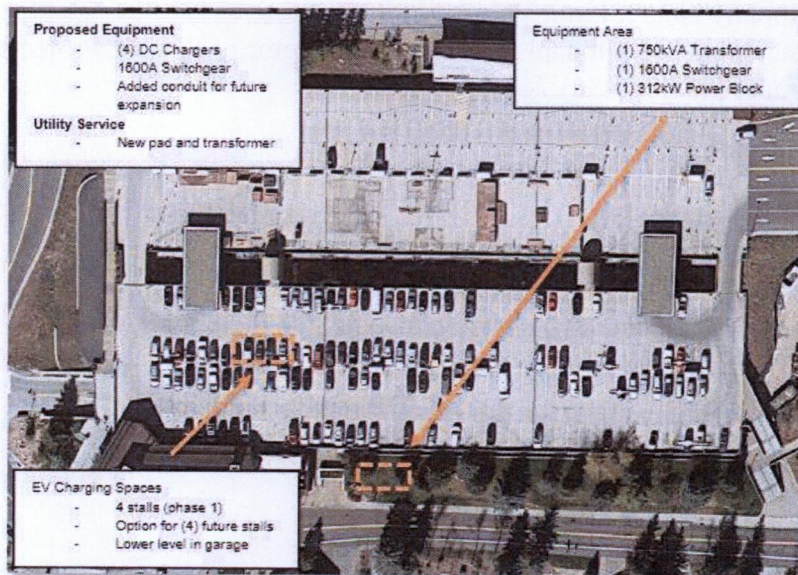
Exhibit "C"

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

Charging Station Location



Location Details on P1 (Equipment to be placed in brick patio area, trenching to chargers)



Job Estimate from LVI

ESTIMATE SHEET

Job Name	ChargePoint - 1600A	OPT. 1	Contractor	LVI	Estimate No.	
Location	Vail, CO		Architect		Date	10/09/19
Estimator	Mike Rodriguez		Checked by		Bid Date	

Based on Utility info provided. Existing Transformer will be upsized by UTILITY. Secondary is routed up slope an into heated brick patio area. Switchgear and Power Blocks will be place against rock knee wall. LVI will remove pavers for excavation, trenching and/or equipment pads as needed. Snow melt cable must be removed and rerouted by others. This option requires trenching through the garage and will require the entrance/exit be 100% blocked from traffic. 480v power will NOT be routed to dispensers. Called Utility for details on method of entering existing Transformer, our conduits must go down to 6ft below grade to enter the vault beneath the transformer. They terminate conduit in vault and pull our provided wire to the switchgear. The retaining wall behind the transformer will make the excavation about 8-9ft deep. WE MUST PROVIDE SHORING methods any length of trench below 4ft.

DESCRIPTION	UNIT VALUES					EXTENDED COSTS		
	QUANTITY	UNIT \$	LABOR HOURS PER UNIT	TOTAL LABOR HOURS	LABOR COST PER HOUR	MATERIAL	LABOR	TOTAL
Transformer Vault Excavation For Access	1.0	12,000.00	48.00	48.0	\$ 60.00	\$ -	\$ -	\$ -
Concrete - Distribution Pad 4'x 16' x 6"	1.0	2,500.00	44.00	44.0	\$ 60.00	\$ 2,500.00	\$ 2,840.00	\$ 5,140.00
Meter on Utility XFMR	-	-	-	-	\$ 60.00	\$ -	\$ -	\$ -
CPE 250 EV Pedestal Concrete base	4.0	750.00	6.00	24.0	\$ 60.00	\$ 3,000.00	\$ 1,440.00	\$ 4,440.00
Saw Cutting	140.0	25.00	0.25	35.0	\$ 60.00	\$ 3,500.00	\$ 2,100.00	\$ 5,600.00
Trenching & Excavation	190.0	65.00	1.50	285.0	\$ 60.00	\$ 12,350.00	\$ 17,100.00	\$ 29,450.00
					\$ 60.00	\$ -	\$ -	\$ -
					\$ 60.00	\$ -	\$ -	\$ -
4 sets of 4 #600 #3/0 grd. in 4" PVC xfmr to MSB	50.0	180.00	2.50	125.0	\$ 60.00	\$ 9,000.00	\$ 7,500.00	\$ 16,500.00
					\$ 60.00	\$ -	\$ -	\$ -
UG Pull Box	3.0	650.00	8.00	24.0	\$ 60.00	\$ 1,950.00	\$ 1,440.00	\$ 3,390.00
Drainage stone by yard	1.0	150.00	2.00	2.0	\$ 60.00	\$ 150.00	\$ 120.00	\$ 270.00
1600A MCB Distribution	1.0	26,559.00	28.00	28.0	\$ 60.00	\$ 26,559.00	\$ 1,680.00	\$ 28,239.00
Grounding	2.0	300.00	8.00	16.0	\$ 60.00	\$ 600.00	\$ 960.00	\$ 1,560.00
480v (3) #2, #8grd THWN-2 in 1.5" C. to CPE 250	-	23.00	0.30	-	\$ 60.00	\$ -	\$ -	\$ -
480v (3) #500, #2/0grd THWN in 4" C. to Power Block (2)	25.0	44.00	1.50	37.5	\$ 60.00	\$ 1,100.00	\$ 2,250.00	\$ 3,350.00
(2)1000v DC #250 XHHW-2 RW90 in 2" C. Power Block to Disp	500.0	33.00	0.25	125.0	\$ 60.00	\$ 16,500.00	\$ 7,500.00	\$ 24,000.00
(2)1000v DC #2/0 XHHW-2 RW90 in 2" C. Loop between Disp.	-	26.00	1.00	-	\$ 60.00	\$ -	\$ -	\$ -
CAT 5 2#10 in 1" PVC. Lvl 3 controls	500.0	5.00	0.07	35.0	\$ 60.00	\$ 2,500.00	\$ 2,100.00	\$ 4,600.00
480v empty 4" C. for future Power Block	-	26.00	0.40	-	\$ 60.00	\$ -	\$ -	\$ -
(4) 3" empty to j-box for future Disp.	125.0	30.00	0.20	25.0	\$ 60.00	\$ 3,750.00	\$ 1,500.00	\$ 5,250.00
(4) 1" empty to j-box for future Disp.	125.0	6.00	0.10	12.5	\$ 60.00	\$ 750.00	\$ 750.00	\$ 1,500.00
4" Concrete Bollard buried w/yel cover	4.0	350.00	3.00	12.0	\$ 60.00	\$ 1,400.00	\$ 720.00	\$ 2,120.00
Wall Mnt EV Sign	4.0	150.00	1.00	4.0	\$ 60.00	\$ 600.00	\$ 240.00	\$ 840.00
Site Supervision	-	-	-	260.0	\$ 60.00	\$ -	\$ 15,600.00	\$ 15,600.00
Port a Can	-	800.00	-	-	\$ 60.00	\$ -	\$ -	\$ -
Traffic Barricades	1.0	1,000.00	6.00	6.0	\$ 60.00	\$ 1,000.00	\$ 360.00	\$ 1,360.00
UG Location service	1.0	800.00	4.00	4.0	\$ 60.00	\$ 800.00	\$ 240.00	\$ 1,040.00
Spoils Dumpster	3.0	1,200.00	4.00	12.0	\$ 60.00	\$ 3,600.00	\$ 720.00	\$ 4,320.00
Stencil	4.0	450.00	8.00	32.0	\$ 60.00	\$ 1,800.00	\$ 1,920.00	\$ 3,720.00
TOTALS				1,186.0		\$ 107,259.00	\$ 71,760.00	\$ 177,169.00
MISCELLANEOUS JOB EXPENSES						AMOUNT	MATERIAL %	
						6,500.00		10.0%
						6,500.00		10.540.90
						1,500.00		6.0%
						3,800.00		11,262.59
EXCLUDES: Utility Provider Fees Repair of unforeseen existing utilities.								
480v power to dispensers.								
TOTAL						\$ 18,300.00	TOTAL BID	\$ 217,272.49

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 one business day from the date ChargePoint becomes aware of an issue.
 - f. Begin onsite repairs within one business day from the delivery of any parts required to fix your Charging Station.
 - g. ChargePoint will provide software moves, adds and changes at no additional cost
 - h. ChargePoint guarantees a 98% annual station uptime with a prorated refund of up to the annual station Assure maintenance fee for outages caused by station hardware or software failures in excess of 2% annually
 - i. ChargePoint will provide standard monthly summary and quarterly detailed station usage and performance metrics.
 - j. ChargePoint will cover the labor portion of non-cosmetic station repairs caused by vandalism, auto accidents or excessive wear and tear.
2. **WHAT IS NOT COVERED:** ChargePoint undertakes no responsibility with respect to repairing, replacing, monitoring or servicing anything other than your Charging Stations. This means, for example, that ChargePoint is not responsible for the physical mounting and electrical wiring of your Charging Stations or for the performance of any cellular or Wi-Fi repeaters or other devices installed in connection with your Charging Stations.
3. **CUSTOMER RESPONSIBILITIES:** In order to perform its obligations under ChargePoint Assure, ChargePoint needs your cooperation. Specifically, you agree to:
 - a. Provide reasonable access to ChargePoint or its designee as necessary for the performance of ChargePoint’s obligations.
 - b. Permit ChargePoint to access the Charging Stations remotely by maintaining a separately purchased Cloud Services subscription necessary for remote access.

- c. Maintain your premises in accordance with all applicable laws, rules and regulations.
 - d. Keep the areas in which Charging Stations are located in a clean, safe and orderly condition, to at least the same standard as you customarily use to maintain the remainder of your premises.
 - e. Promptly notify ChargePoint of any suspected defect with a Charging Station.
4. **WHO IS ELIGIBLE FOR CHARGEPOINT ASSURE?:** ChargePoint Assure is only available to purchasers of Charging Stations who either: 1) use a ChargePoint Operations and Maintenance Partner (“O&M Partner”) to install their Charging Stations or 2) successfully complete a site validation as described below.
- a. **ChargePoint O&M Partner Installation.** For information on how to contact a ChargePoint O&M Partner, please contact your ChargePoint sales representative or authorized ChargePoint reseller for more details.
 - b. **Site Validation:** If you do not use an O&M Partner to install your Charging Station, you still will be eligible for ChargePoint Assure after your installation has been validated by ChargePoint or an authorized third party. The purpose of the site validation is to ensure that your Charging Stations were installed correctly, in accordance with ChargePoint’s recommended specifications and operational requirements. Site validations require the payment of ChargePoint’s then current fee, charged on a “per site” basis. For these purposes, a “site” is defined as any group of Charging Stations whose circuits are terminated at the same power panel.
5. **EXCLUSIONS FROM COVERAGE:** ChargePoint’s obligations under ChargePoint Assure shall not apply to defects or service repairs resulting from the following:
- a. Cosmetic damage such as scratches and dents.
 - b. Normal aging.
 - c. Except as provided in 1(j) above, abuse, vandalism, damage or other problems caused by accidents or negligence (including but not limited to physical damage from being struck by a vehicle), or use of the Charging Station in a way other than as specified in the applicable Charge Point documentation.
 - d. Installation, alteration, modification or relocation of the Charging Station that was not approved in writing by ChargePoint, performed by an O&M Partner or validated in the manner described above.
 - e. Use of the Charging Station with software, interfacing, parts or supplies not supplied by ChargePoint.
 - f. Damage as a result of extreme power surge, extreme electromagnetic field or any other acts of nature.
- In addition ChargePoint’s obligations under ChargePoint Assure shall not apply to any Charging Station that was not installed by a ChargePoint O&M Partner or a ChargePoint certified installer pursuant to the provisions of Section 4 of these Terms and Conditions.
6. **CONTACT INFORMATION:** If at any time during the term of your coverage of ChargePoint Assure you believe you have a defective Charging Station, contact Customer Service at 1-877-850-4562 or support@chargepoint.com.

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. If you have purchased extended ChargePoint Assure and have chosen the annual payment option, ChargePoint will invoice each annual payment on the anniversary date of your Assure coverage. 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 you 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.

**EXHIBIT E to DONATION AGREEMENT
CEO AND COLORADO GRANT TERMS AND CONDITIONS**

1. INSURANCE

Licensee shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

A. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Licensee employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any damage to premises rented to you limit (any one premises).

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Additional Insured

The State shall be included as additional insured on commercial general liability policy (leases and construction contracts require additional insured coverage for completed operations) required of Licensee and Subcontractors.

E. Primacy of Coverage

General Liability and Automobile Liability shall be primary over any insurance or self-insurance program carried by Licensee or the State.

F. Cancellation

Licensee will endeavor to provide written notice to the State thirty (30) days prior to any cancellation with the exception of non-payment which can then be ten (10) days.

G. Subrogation Waiver

Commercial General Liability, Automobile Liability and Workers' Compensation insurance policies secured or maintained by Licensee or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive rights of recovery under subrogation or otherwise against Licensee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

H. Public Entities

If Licensee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"), Licensee shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Licensee shall ensure that the Subcontractor maintain at all times during the terms of this Licensee, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

I. Certificates

For each commercial insurance plan provided by Licensee under this Agreement, Licensee shall provide to the State certificates evidencing Licensee's insurance coverage required in this Agreement within 7 Business Days following the Effective Date. Licensee shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within 7 Business Days following the Effective Date, except that, if Licensee's subcontract is not in effect as of the Effective Date, Licensee shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within 7 Business Days following Licensee's execution of the subcontract. Within 15 following the expiration date of Licensee's or any Subcontractor's coverage, Licensee shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Licensee shall, within 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §__.

2. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the GIA; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.*, C.R.S.

A. Colorado Open Records Act Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the Colorado Open Records Act.

B. Indemnification

General Indemnification

Licensee shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Licensee, or its employees, agents, Subcontractors, or assignees in connection with this Agreement.

3. GOVERNMENTAL IMMUNITY.

No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S., or the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b).

4. INDEPENDENT CONTRACTOR

Licensee shall perform its duties hereunder as an independent contractor and not as an employee. Neither Licensee nor any agent or employee of Licensee shall be deemed to be an agent or employee of the State. Licensee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Licensee or any of its agents or employees. Unemployment insurance benefits will be available to Licensee and its employees and agents only if such coverage is made available by Licensee or a third party. Licensee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Licensee shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Licensee shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

5. COMPLIANCE WITH LAW.

Licensee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

6. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall

not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.

7. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Agreement or incorporated herein by reference shall be null and void.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TECHNOLOGY XTEND ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|--|---|
| <ul style="list-style-type: none"> A. Reasonable Force Property Damage – Exception To Expected Or Intended Injury Exclusion B. Non-Owned Watercraft Less Than 75 Feet C. Aircraft Chartered With Pilot D. Damage To Premises Rented To You E. Increased Supplementary Payments F. Who Is An Insured – Employees And Volunteer Workers – First Aid G. Who Is An Insured – Employees – Supervisory Positions H. Who Is An Insured – Newly Acquired Or Formed Organizations I. Blanket Additional Insured – Owners, Managers Or Lessors Of Premises J. Blanket Additional Insured – Lessors Of Leased Equipment | <ul style="list-style-type: none"> K. Blanket Additional Insured – Persons Or Organizations For Your Ongoing Operations As Required By Written Contract Or Agreement L. Blanket Additional Insured – Broad Form Vendors M. Who Is An Insured – Unnamed Subsidiaries N. Who Is An Insured – Liability For Conduct Of Unnamed Partnerships Or Joint Ventures O. Medical Payments – Increased Limits P. Contractual Liability – Railroads Q. Knowledge And Notice Of Occurrence Or Offense R. Unintentional Omission S. Blanket Waiver Of Subrogation |
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PROVISIONS

A. REASONABLE FORCE PROPERTY DAMAGE – EXCEPTION TO EXPECTED OR INTENDED INJURY EXCLUSION

The following replaces Exclusion a., **Expected Or Intended Injury**, in Paragraph 2., of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

a. Expected Or Intended Injury Or Damage

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect any person or property.

B. NON-OWNED WATERCRAFT LESS THAN 75 FEET

The following replaces Paragraph (2) of Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

(2) A watercraft you do not own that is:

- (a) Less than 75 feet long; and
- (b) Not being used to carry any person or property for a charge.

C. AIRCRAFT CHARTERED WITH PILOT

The following is added to Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION**

COMMERCIAL GENERAL LIABILITY**I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

This exclusion does not apply to an aircraft that is:

- (a) Chartered with a pilot to any insured;
- (b) Not owned by any insured; and
- (c) Not being used to carry any person or property for a charge.

D. DAMAGE TO PREMISES RENTED TO YOU

1. The first paragraph of the exceptions in Exclusion j., **Damage To Property**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is deleted.
2. The following replaces the last paragraph of Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Exclusions c., g. and h., and Paragraphs (1), (3) and (4) of Exclusion j., do not apply to "premises damage". Exclusion f.(1)(a) does not apply to "premises damage" caused by fire unless Exclusion f. of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by another endorsement to this Coverage Part that has Exclusion - All Pollution Injury Or Damage or Total Pollution Exclusion in its title. A separate limit of insurance applies to "premises damage" as described in Paragraph 6. of Section III – Limits Of Insurance.

3. The following replaces Paragraph 6. of **SECTION III – LIMITS OF INSURANCE**:
 6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "premises damage" to any one premises.

The Damage To Premises Rented To You Limit will be:

- a. The amount shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part; or
- b. \$300,000 if no amount is shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part.

4. The following replaces Paragraph a. of the definition of "insured contract" in the **DEFINITIONS** Section:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "premises damage" is not an "insured contract";

5. The following is added to the **DEFINITIONS** Section:

"Premises damage" means "property damage" to:

- a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or
- b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.

6. The following replaces Paragraph 4.b.(1)(b) of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

- (b) That is insurance for "premises damage"; or

7. Paragraph 4.b.(1)(c) of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted.

E. INCREASED SUPPLEMENTARY PAYMENTS

1. The following replaces Paragraph 1.b. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGES**:

- b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. The following replaces Paragraph 1.d. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGES**:

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

COMMERCIAL GENERAL LIABILITY

F. WHO IS AN INSURED – EMPLOYEES AND VOLUNTEER WORKERS – FIRST AID

1. The following is added to the definition of "occurrence" in the **DEFINITIONS** Section:

Unless you are in the business or occupation of providing professional health care services, "occurrence" also means an act or omission committed by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor, in providing or failing to provide first aid or "Good Samaritan services" to a person.

2. The following is added to Paragraph 2.a.(1) of **SECTION II – WHO IS AN INSURED**:

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any of your "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following is added to Paragraph 5. of **SECTION III – LIMITS OF INSURANCE**:

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed by any of your "employees" or "volunteer workers" in providing or failing to provide first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following is added to the **DEFINITIONS** Section:

"Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.

G. WHO IS AN INSURED – EMPLOYEES – SUPERVISORY POSITIONS

The following is added to Paragraph 2.a.(1) of **SECTION II – WHO IS AN INSURED**:

Paragraphs (1)(a), (b) and (c) above do not apply to "bodily injury" or "personal injury" to a co-"employee" in the course of the co-"employee's" employment by you arising out of work by any of

your "employees" who hold a supervisory position.

H. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED ORGANIZATIONS

The following replaces Paragraph 4. of **SECTION II – WHO IS AN INSURED** of the Commercial General Liability Coverage Form, and Paragraph 3. of **SECTION II – WHO IS AN INSURED** of the Global Companion Commercial General Liability Coverage Form, to the extent such coverage forms are part of your policy:

Any organization you newly acquire or form, other than a partnership or joint venture, of which you are the sole owner or in which you maintain the majority ownership interest, will qualify as a Named Insured if there is no other insurance which provides similar coverage to that organization. However:

- a. Coverage under this provision is afforded only:

- (1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

- (2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it, and we agree in writing that it will continue to be a Named Insured until the end of the policy period;

- b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

- c. Coverage **B** does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

I. BLANKET ADDITIONAL INSURED – OWNERS, MANAGERS OR LESSORS OF PREMISES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is a premises owner, manager or lessor is an insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor does not apply to:

COMMERCIAL GENERAL LIABILITY

- a. Any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or
- b. Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, manager or lessor.

J. BLANKET ADDITIONAL INSURED – LESSORS OF LEASED EQUIPMENT

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is an equipment lessor is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by your acts or omissions in the maintenance, operation or use by you of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor does not apply to any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after the equipment lease expires.

K. BLANKET ADDITIONAL INSURED – PERSONS OR ORGANIZATIONS FOR YOUR ONGOING OPERATIONS AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is not otherwise an insured under this Coverage Part and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Is caused by an "occurrence" that takes place after you have signed and executed that contract or agreement; and
- b. Is caused, in whole or in part, by your acts or omissions in the performance of your ongoing operations to which that contract or agreement applies or the acts or omissions of any person or organization performing such operations on your behalf.

The limits of insurance provided to such insured will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

L. BLANKET ADDITIONAL INSURED – BROAD FORM VENDORS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is a vendor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Is caused by an "occurrence" that takes place after you have signed and executed that contract or agreement; and
- b. Arises out of "your products" which are distributed or sold in the regular course of such vendor's business.

The insurance provided to such vendor is subject to the following provisions:

- a. The limits of insurance provided to such vendor will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such vendor does not apply to:
 - (1) Any express warranty not authorized by you;
 - (2) Any change in "your products" made by such vendor;
 - (3) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - (4) Any failure to make such inspections, adjustments, tests or servicing as vendors agree to perform or normally undertake to perform in the regular course of business, in connection with the distribution or sale of "your products";
 - (5) Demonstration, installation, servicing or repair operations, except such operations performed at such vendor's premises in connection with the sale of "your products"; or
 - (6) "Your products" which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part or ingredient of any other thing or substance by or on behalf of such vendor.

COMMERCIAL GENERAL LIABILITY

Coverage under this provision does not apply to:

- a. Any person or organization from whom you have acquired "your products", or any ingredient, part or container entering into, accompanying or containing such products; or
- b. Any vendor for which coverage as an additional insured specifically is scheduled by endorsement.

M. WHO IS AN INSURED – UNNAMED SUBSIDIARIES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a. You maintain an ownership interest of more than 50% in such subsidiary on the first day of the policy period; and
- b. Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed:

- a. Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b. After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

N. WHO IS AN INSURED – LIABILITY FOR CONDUCT OF UNNAMED PARTNERSHIPS OR JOINT VENTURES

The following replaces the last paragraph of **SECTION II – WHO IS AN INSURED**:

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations. This paragraph does not apply to any such partnership or joint venture that otherwise qualifies as an insured under Section II – Who Is An Insured.

O. MEDICAL PAYMENTS – INCREASED LIMITS

The following replaces Paragraph 7. of **SECTION III – LIMITS OF INSURANCE**:

7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person, and will be the higher of:
 - (a) \$10,000; or

- (b) The amount shown on the Declarations of this Coverage Part for Medical Expense Limit.

P. CONTRACTUAL LIABILITY – RAILROADS

1. The following replaces Paragraph c. of the definition of "insured contract" in the **DEFINITIONS** Section:
 - c. Any easement or license agreement;
2. Paragraph f.(1) of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

Q. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE

The following is added to Paragraph 2., **Duties In The Event of Occurrence, Offense, Claim or Suit**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

- e. The following provisions apply to Paragraph a. above, but only for the purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph 1. or 2. of Section II – Who Is An Insured:
 - (1) Notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known to you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your trustees who is an individual (if you are a trust), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture, limited liability company or trust) or any "employee" authorized by you to give notice of an "occurrence" or offense.
 - (2) If you are a partnership, joint venture, limited liability company or trust, and none of your partners, joint venture members, managers or trustees are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:
 - (a) Any individual who is:
 - (i) A partner or member of any partnership or joint venture;
 - (ii) A manager of any limited liability company;

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- (iii) A trustee of any trust; or
- (iv) An executive officer or director of any other organization;

that is your partner, joint venture member, manager or trustee; or

- (b) Any "employee" authorized by such partnership, joint venture, limited liability company, trust or other organization to give notice of an "occurrence" or offense.
- (3) Notice to us of such "occurrence" or offense will be deemed to be given as soon as practicable if it is given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice to us of the "occurrence" or offense as soon as practicable after any of the persons described in Paragraphs e. (1) or (2) above discovers that the "occurrence" or offense may result in sums to which the insurance provided under this Coverage Part may apply.

However, if this policy includes an endorsement that provides limited coverage for "bodily injury" or "property damage" or pollution costs arising out of a discharge, release or escape of "pollutants" which contains a requirement that the discharge, release or escape of "pollutants" must be reported to us within a specific number of days after its

abrupt commencement, this Paragraph e. does not affect that requirement.

R. UNINTENTIONAL OMISSION

The following is added to Paragraph 6., **Representations**, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

S. BLANKET WAIVER OF SUBROGATION

The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" caused by an "occurrence" that takes place; or
- b. "Personal injury" or "advertising injury" caused by an offense that is committed;

subsequent to the execution of the contract or agreement.

