

Novelo, Lilia

Subject: FW: December 12, 2011 City Council Agenda Item #9
Attachments: TALKING POINTS RE CITY OF PASADENA PLAN TO DELAY EV CHARGING INSTALLATIONS.docx

From: Jomsky, Mark
Sent: Monday, December 12, 2011 11:53 AM
To: Novelo, Lilia; Iraheta, Alba
Subject: FW: December 12, 2011 City Council Agenda Item #9

From: Enid Joffe [mailto:enidjoffe@Cleanfuelconnection.com]
Sent: Monday, December 12, 2011 10:54 AM
To: Jomsky, Mark
Subject: FW: December 12, 2011 City Council Agenda Item #9

To: Mark Jomsky

Attached is an email and talking points for Item 9 on tomorrow's Council agenda that I have shared with Mayor Bogaard and the other Council members. It was also forwarded to Vice Mayor McAustin Please share this with anyone else who should receive it.

Thank you.

Enid Joffe

Clean Fuel Connection, Inc.



127 La Porte Street Unit M
Arcadia, CA 91006
www.cleanfuelconnection.com
626 445-1445 ext 100(office)
626 445-1450 (fax)
626 533-2225 (cell)

From: Enid Joffe
Sent: Saturday, December 10, 2011 2:25 PM
To: 'bbogaard@cityofpasadena.net'; 'rstone@cityofpasadena.net'; 'district1@cityofpasadena.net'; 'jmcintyre@cityofpasadena.net'; 'nsullivan@cityofpasadena.net'; 'ttornek@cityofpasadena.net'; 'smadison@cityofpasadena.net'; 'ttornek@cityofpasadena.net'
Subject: December 12, 2011 City Council Agenda Item #9

Honorable Mayor Bogaard, Vice Mayor McAustin and Members of the Pasadena City Council:

I am writing in regard to Item #9 on the City Council agenda this Tuesday December 12. Some of you may remember me—I am the former Mayor of Sierra Madre (2008). I also own a clean energy business that started in East Pasadena (in

the building that now houses A Noise Within) and is now located in Arcadia. When we started our business in 1999, the City of Pasadena was one of our first clients so we feel very loyal to the City. For the past 18 years, I have also been an advocate for EVs as well as a business owner and drove my 10 year old RAV 4 to this meeting.

I am writing to express my concern about the staff recommendation on Agenda Item # 9 to to **delay** the installation of EV charging stations until at least **FY 2013**. **I urge you to direct staff to review the available matching funds and greatly accelerate the starting date of this program to early 2012 so that the City can take advantage of current matching fund award offers and retain its leadership position as a green city.**

As stated in the Staff Report, the City has received a three-year \$573,000 grant from LA Metro to install charging stations. I wrote the successful grant application for the City. The grant requires a 20 percent match of \$143,000. During lengthy discussions with the Department of Transportation, two manufacturers--Coulomb Technologies and Clipper Creek-- have verbally offered the City federal and state grant awards from funding they received from ARRA and the California Energy Commission. The City may also get money under SoCalEV AB 118 grant from the CEC.

Staff is recommending delaying the implementation of the project in order to "assess the changes necessary to the existing inductive chargers and develop criteria for deploying EV chargers for public use." This 18 month delay is completely unnecessary. As a result of postponing implementation the City will lose access to these time-sensitive grant funds and may have to spend their own money as match instead of using federal and state grant funds.

The issues raised in the staff report have already been addressed. A plan for replacement of existing chargers and deployment of new ones was developed as part of the LA Metro grant application and has been accepted. Criteria for deploying EV chargers were developed in the 1990s when the first charging stations were installed in the City and they have worked well. The concerns of parking staff about revenue recovery have also been addressed by noting that the new equipment can charge the users to cover the costs of electricity, operations and maintenance.

Ten thousand EVs are already on the road in the U.S. with hundreds of thousands more to come in the near future. In the next two years, twenty-five new plug-in vehicle models will join the Nissan Leaf and Chevy Volt on our streets. If the City approves this delay, local EV drivers, like myself, will just have to wait two years before we can drive to Old Town and pay to charge.

In these tough economic times, this delay could hurt the city economically and tarnish the City's excellent environmental record. I have attached some additional points for you to consider in your discussion. I will be at the Council meeting on Monday to speak and will prepare written comments as well.

Apologies for the late notice but the staff report was not posted until Thursday night.

Respectfully,

Enid Joffe

Clean Fuel Connection, Inc.



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626 445-1445 ext 100(office)

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Novelo, Lilia

From: Jomsky, Mark
Sent: Monday, December 12, 2011 1:36 PM
To: Novelo, Lilia; Iraheta, Alba
Subject: FW: Invitation to Participate - ChargePoint America Program
Attachments: Coulomb - CPA Order Form - City of Glendale.doc; CPA Award - City of Glendale - 11DEC11.pdf; Coulomb - master services agreement -7-14-11 (r.4).pdf; coulomb - chargepoint america warranty 7JUL11.pdf

Second submission for Item 9.

From: Enid Joffe [mailto:enidjoffe@Cleanfuelconnection.com]
Sent: Monday, December 12, 2011 11:31 AM
To: McAustin, Margaret; Bogaard, Bill; Stone, Rhonda
Subject: FW: Invitation to Participate - ChargePoint America Program

Mayor Bogard and Vice Mayor McAustin:

FYI, attached is an example of manufacturer award for chargers I mentioned in my email and comments. This was just sent to Glendale for approval by the City Attorney. Glendale is installing chargers at 4 locations and the costs are being 100% paid for by the manufacturer. At the end of the award period (12/31/2014), the City can decide whether to keep the chargers or remove them. It is the same agreement signed by dozens of cities in CA and nine other regions around the U.S. including New York City.

Regards,
Enid



Enid Joffe
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From: Michael Jones [mailto:mjones@coulombtech.com]
Sent: Sunday, December 11, 2011 10:22 PM
To: MiMartinez@ci.glendale.ca.us

Cc: Enid Joffe; John Whitney; Rgranite-Johnson@ci.glendale.ca.us
Subject: Invitation to Participate - ChargePoint America Program

Hello Mirna,

You have been invited to participate in the ChargePoint America program sponsored by Coulomb Technologies and the US Department of Energy. Participation instructions are located on the cover page of the ChargePoint California Award Agreement (CPC). Clean Fuel Connection Inc. will continue to provide local support and can answer most of your questions, but do not hesitate to contact me as an additional resource. We look forward to your participation.

Regards,



Fueling the Electric Transportation Industry

Michael Jones

Director, Western Region

Coulomb Technologies, Inc.

1692 Dell Avenue, Campbell, CA 95008

Mobile: 858-218-4719 | Office/Fax: 949-313-7732

michael.jones@coulombtech.com

www.coulombtech.com

www.chargepointamerica.com

ChargePoint Named Time Magazine Winner '50 Best Inventions 2010'

This email and any attachments are intended for the sole use of the intended recipient(s) and contain(s) confidential information that may be proprietary, privileged or copyrighted under applicable law. If you are not the intended recipient, do not read, copy, or forward this email message or any attachments and delete this email message and any attachments immediately.

ChargePoint America Station Order Form

I, the undersigned, agree to order the following items at the designated prices per the ChargePoint California Award Letter dated **12/11/2011**.

Product Name	Product Description	Product Code	Quantity	Unit Price	Total Price
CT2021C-GPRS-LOCK-CCR	Dual 208/240-30A Bollard with GPRS, locking holster, and credit card reader	CT2021C-GPRS-LOCK-CCR	4	\$0.00	\$0.00

Grand Total:	\$0.00
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Please ship the charging system(s) to the following address:

Contact Name at ship to address: _____

Contact Phone at ship to address: _____

Contact email at ship to address: _____

I agree on behalf of my organization to the terms and conditions in the ChargePoint America Award Letter and the Master Services Subscription Agreement provided to me.

Signed: _____

Name: _____

Title: _____

Organization: _____

Date: _____



12/11/11

Mirna Martinez
City of Glendale
PW Traffic and Transportation
613 E. Broadway
Glendale, CA 91206

Dear Mirna:

Congratulations! Your organization has been invited to participate in Coulomb Technologies ChargePoint America™ Program. The Program has been funded in part under the terms of Grant number DE-EE0003391 from the United States Department of Energy as part of the American Reinvestment and Recovery Act. In order to receive delivery of the Charging Station(s), you must agree to all of the terms and conditions following. Furthermore, you need to:

1. Countersign at the end of this ChargePoint America Station Award Agreement (CPA) and provide a full copy back to Coulomb.
2. Countersign the Master Services Subscription Agreement (MSSA) and provide a full copy back to Coulomb.
3. Provide a \$0 PO or return the ChargePoint America order form to Coulomb Technology for the charging station(s). If you use a PO, Please make sure the part numbers on the order correspond to the part numbers on this letter and you provide a requested shipment date, ship to address with a contact name, phone number, and email address.
4. A copy of the ChargePoint America warranty is provided for your reference.
5. Please familiarize yourself with the Contractor Installation Reporting Guide as documentation of the cost match is an obligation.
6. Return the documents by 12/28/11. As the program nears completion, contracts will be accepted as program funds remain available.

Please note that delivery of the charging systems will be up to 4-6 weeks of receipt of PO and associated signed documents. We appreciate your participation in this exciting program and look forward to creating an electric vehicle charging infrastructure in your area.

Best regards,

Michael Jones
Western Region Director
ChargePoint America Program
Coulomb Technologies



CHARGEPOINT AMERICA™ STATION AWARD AGREEMENT

- 1. Charging Stations.** Your organization (“You”) has been awarded, and may be awarded from time to time, one or more Coulomb Technologies, Inc. (“CTI”) electric vehicle charging stations under the ChargePoint America™ Program . The Program has been funded in part under the terms of Grant number DE-EE0003391 from the United States Department of Energy (the “DOE”) as part of the American Reinvestment and Recovery Act (“ARRA”). The charging stations will be installed at the locations specified on Appendix A, as amended from time to time to reflect the award of additional Charging Stations under this Station Award Agreement.

Product Name	Product Description	Product Code	Quantity	Unit Price	Total Price
CT2021C-GPRS-LOCK-CCR	Dual 208/240-30A Bollard with GPRS, locking holster, and credit card reader	CT2021C-GPRS-LOCK-CCR	4	\$0.00	\$0.00

Grand Total:	\$0.00
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- 2. Shipment and Delivery.** CTI will pay for the cost of standard delivery charges of the Charging Stations to the locations designated by You in writing to CTI. CTI shall choose the method by which Charging Stations are to be delivered. If You desire expedited delivery, You will be responsible for the payment of all delivery charges.
- 3. Installation.** (a) Installation of the Charging Stations shall be at your sole cost and expense. Unless specifically agreed in writing, installation of the Charging Stations may only be performed by a CTI Authorized Installer. Should You wish to use your own installer, you shall request CTI’s permission, in its reasonable discretion, to do so no more than fifteen (15) days prior to the scheduled installation date. You should be aware, certain requirements must be met by all contractors and subcontractors working to install electric vehicles station equipment (EVSE) as part of the Grant. The Davis Bacon and Related Acts (DBRA) requires all contractors and subcontractors performing work on federal construction contracts or federally assisted contracts to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area. The prevailing wage rates and fringe benefits are determined by the Secretary of Labor. For the ChargePoint America program, construction includes all alterations, improvements and/or repair, including painting and decorating, performed on a site in performance of the installation of EVSE. In addition, because the Charging Stations are being awarded to You under a Federal program, in the event You use your own installer, such installer shall become subject to certain audit and other rights granted to the United States government and to CTI. Also, should you be authorized to use your own contractor to install the charging stations, the contractor will be required to submit to CTI or the



applicable CTI Distributor within 5 days of the installation, the applicable DBRA related paperwork including (i) a certified payroll or a properly filled out US government form wh-347 and (ii) an invoice or receipt for the work done to install the charging station(s) including costs for panel rework, trenching, concrete pad placement, fixing the station, and electrical wiring. Furthermore, you shall indemnify and hold harmless CTI from all costs (including, without limitation, reasonable attorneys' fees), losses, charges, fees, fines and other expenses of any sort whatsoever, including, without limitation, the refusal of the DOE to provide reimbursement to CTI in respect of the Charging Stations awarded to you, incurred by CTI as a result of such installer's (i) failure to comply with any applicable law, including, without limitation, the Davis-Bacon Act or (ii) failure to provide CTI such documentation as is reasonably needed by it to comply with applicable DOE requirements.

(b) You agree to cause the installation of the Charging Stations, and the provision of such Charging Stations on the ChargePoint Network, within forty five (45) days of their delivery to You. In the event that the Charging Stations have not been installed by the expiration of such forty five day period, CTI reserves the right to reclaim the Charging Stations. In the event that You are having trouble arranging for the installation of the Charging Stations by an Authorized Distributor or an installer chosen by such Authorized Distributor, please contact CTI as soon as possible so that it can assist you in obtaining prompt installation of the Charging Stations.

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

4. **Warranty/Limitation of Liability.** (a) **Warranty.** The Charging Station is covered by the terms of CTI's standard Warranty (the "Warranty") for a period beginning on the date of installation and running until December 31, 2013. A copy of the Warranty is included with this agreement. All applicable warranties with respect to the Charging Station are set forth in the Warranty, and are hereby incorporated by reference into this Agreement. (b) **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 4 AND IN THE WARRANTY, CTI MAKES NO WARRANTY WITH RESPECT TO THE PERFORMANCE OF THE CHARGING STATION, THE CHARGEPOINT™ NETWORK STANDARD SERVICES OR THE CHARGEPOINT™ NETWORK, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. CTI EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS BY THE CHARGING STATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CTI DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF THE CHARGING 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 CTI 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 CHARGING STATION, THE CHARGEPOINT™ NETWORK, ANY CHARGEPOINT™ NETWORK SERVICES, OR OTHERWISE OR BASED ON ANY EXPRESSED, IMPLIED OR CLAIMED WARRANTIES BY YOU NOT SPECIFICALLY SET FORTH IN THIS ADDENDUM. BECAUSE SOME STATES OR JURISDICITON DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY. (ii) YOUR SOLE REMEDY FOR ANY BREACH BY CTI OF ITS OBLIGATIONS OR WARRANTIES UNDER THIS AGREEMENT SHALL BE LIMITED TO, AT CTI'S OPTION, REPAIR OR REPLACEMENT OF THE CHARGING STATION. (d) **Warranty Exclusions. Exclusive Remedies.** THE REMEDIES CONTAINED IN SECTION 4 ARE YOUR SOLE AND EXCLUSIVE REMEDIES AND ARE IN LIEU OF ANY



OTHER RIGHTS OR REMEDIES YOU MAY HAVE AGAINST CTI WITH RESPECT TO THE PERFORMANCE OF THE CHARGING STATIONS, THE CHARGEPOINT™ NETWORK STANDARD SERVICES OR THE CHARGEPOINT™ NETWORK.

5. **Access to the Public.** All of the Charging Stations will be installed in a manner and in locations that make them available for access and use by the general public. The Charging Stations, and the facilities in which they are located, shall be kept clean and in good repair. You shall promptly call CTI or an Authorized Distributor in order to arrange for the repair of any non-functioning Charging Stations.
6. **Network Access.** As a part of the award, You will receive a free subscription for ChargePoint™ Network Standard Service, as defined in the ChargePoint™ Master Services Subscription Agreement (the "Master Services Agreement"), that will expire December 31, 2013 (the "Subscription Period"). You must execute a copy of the Master Services Agreement as a part of your obligations under this ChargePoint America™ Station Award Agreement and must keep the Charging Stations connected to the ChargePoint™ Network throughout the entire Subscription Period. CTI offers various other services, such as billing services, which may be accessed through the ChargePoint Network™. All of such services are subject to CTI's standard terms and conditions.
7. **Access to Information.** In consideration of your receipt of the Charging Stations and free subscription to ChargePoint™ Network Standard Service, you agree to provide and release to CTI, the DOE, such other participants and partners of CTI in the Program as CTI shall determine necessary, all data and information relating to You, Your electric vehicles, if any, and their use, the use by others of Your Charging Stations and Your use of the Charging Stations and any public Charging Stations and infrastructure (the "Data"). You acknowledge and agree that the Data may be used by any of the above-described persons for any purpose, including analyzing Your use and charging patterns, the public's use of Your Charging Stations, the effectiveness of infrastructure put in place to meet the needs of drivers of electric vehicles, and the efficacy of the Program. Your performance of this Agreement and willingness to supply and release Data to the persons described in the immediately preceding paragraph is a material condition to CTI's willingness to enter into this Agreement with You and provide the Charging Stations hereunder. You understand, acknowledge and agree that CTI will need Your reasonable cooperation and assistance, and You agree to provide your reasonable cooperation and assistance to CTI, so that CTI can successfully conduct its testing and collect Data from You, the Charging Stations, and public electric vehicle infrastructure utilized by You and others. Except as set forth in this Section 7, the use of the Charging Stations will be subject to CTI's standard privacy policy (the "Privacy Policy"). The Privacy Policy is located on CTI's web site and may be accessed at: <http://www.coulombtech.com/privacy-policy.php> Notwithstanding anything to the contrary contained in this Section 7, or in the Privacy Policy, CTI reserves the right, on behalf of the DOE, to collect certain anonymous information regarding the use and operation of the Charging Stations.
8. **Certain Rights of the United States Government.** Notwithstanding the fact that You are being awarded the Charging Stations under the Program, the United States Government reserves the right to seize the Charging Stations under certain, limited circumstances, including, without limitation, national emergency.



9. **No Right to Remove, Move or Sell the Charging Stations.** The Charging Stations may not be removed, moved or sold from their place of installation, prior to January 1, 2014, without the prior written consent of CTI.
10. **Failure to Comply with Terms of the Program.** In the event that You fail to comply with the terms of the program, including, but not limited to (i) the use of an CTI authorized installer (ii) providing documentation of the installation costs (iii) allowing public access to the station(s), You are liable for losses and/or damages incurred by CTI. If You fail to comply with the program or make restitution within 30 days of receiving a demand notice from CTI, CTI reserves the right to repossess the charging station(s) You received under the grant.
11. **Additional Charging Stations.** In the event that You have purchased Charging Stations that are to become a part of the Program, CTI's standard terms and conditions shall apply.
12. **No Amendment or Modification.** No modification, amendment or waiver of this Agreement shall be effective unless in writing and either signed or electronically accepted by the party against whom the amendment, modification or waiver is to be asserted.
13. **Waiver.** CTI's failure at any time to require your performance of any obligation under this Agreement will in no way affect the full right to require such performance at any time thereafter. CTI's waiver of a breach of any provision of this Agreement will not constitute a waiver of the provision itself. CTI'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 a CTI authorized representative. Any such waiver will be effective only with respect to the specific instance and for the specific purpose given.
14. **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 of California shall have exclusive jurisdiction over any claim arising under this Agreement.
15. **Waiver of Jury Trial.** You and CTI each hereby waive any right to jury trial in connection with any action or litigation arising out of this Agreement.
16. **Severability.** Except as otherwise specifically provided herein, if any term or condition of this Agreement or the application thereof to either You or CTI 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, You and CTI 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 your rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of CTI.
18. **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.
19. **Priority.** To the extent of any conflict or inconsistency between the terms and conditions of this Agreement and any purchase order, the Agreement shall prevail. To the extent of any



conflict or inconsistency between the terms and conditions of the Warranty and any purchase order, the Warranty shall prevail.

20. **Availability of Stations** - There is a limited number of charging stations in the program. Receipt of this ChargePoint America Station Award Agreement does not guarantee your organization a station. Allocation of remaining stations is at the sole discretion of CTI and based on availability of program funds and prompt of receipt of executed documents.

COULOMB TECHNOLOGIES, INC.

CITY OF GLENDALE

By: _____
(Signature)

By: _____
(Signature)

Name: _____

Name: _____

Title: _____

Title: _____



APPENDIX A - CHARGING STATION LOCATIONS

1-Market Place Parking Structure	120 S. Maryland Ave.
1-Orange Street Structure	222 N. Orange Street
1-Exchange Parking Structure	128 N. Maryland Ave.
1-Glendale Transportation Center	400 W. Cerritos Ave

CHARGEPOINT®
MASTER SERVICES AND SUBSCRIPTION AGREEMENT

IMPORTANT: PLEASE READ THIS MASTER SERVICES AND SUBSCRIPTION AGREEMENT (“AGREEMENT”) CAREFULLY.

THIS AGREEMENT GOVERNS REGISTRATION OF YOUR CHARGING STATION (OR THE CHARGING STATIONS OF THE ORGANIZATION YOU REPRESENT) ON THE CHARGEPOINT NETWORK AND ACTIVATION OF CHARGEPOINT NETWORK SERVICES ON YOUR CHARGING STATIONS. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE AUTHORITY TO BIND SUCH COMPANY OR OTHER LEGAL ENTITY TO THESE TERMS AND CONDITIONS; IF NOT, YOU MAY NOT ENTER INTO THIS AGREEMENT AND MAY NOT USE THE CHARGEPOINT SERVICES.

SUBSCRIBER AGREES THAT IT MAY NOT AND WILL NOT ACCESS THE CHARGEPOINT NETWORK SERVICES FOR PURPOSES OF MONITORING THEIR AVAILABILITY, PERFORMANCE OR FUNCTIONALITY, OR ANY OTHER BENCHMARKING OR COMPETITIVE PURPOSE.

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

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

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

1.3 “ChargePoint Services” means, collectively, the various software as a service offerings made available for subscription by CTI.

1.4 “ChargePoint Web Portal” means any of the secure Internet web portals established and maintained by CTI which will allow Subscriber to access ChargePoint Services.

1.5 “Charging Station” means the electric vehicle charging station(s) purchased by Subscriber, whether manufactured by CTI or by another CTI licensed entity, which have embedded within them CTI hardware and/or firmware, enabling Subscriber to register and activate such charging stations on the ChargePoint Network.

1.6 “CTI” means Coulomb Technologies, Inc., a Delaware corporation.

1.7 “CTI Marks” means the various trademarks, service marks, names and designations used in connection with the CTI manufactured Charging Stations and/or the ChargePoint Network, including, without limitation, ChargePoint and ChargePass™.

1.8 “CTI Intellectual Property” means all Intellectual Property Rights of CTI relating to the CTI Marks, the ChargePoint Network, the ChargePoint Services, ChargePass, ChargePass Radio Frequency Identification Cards, ChargePass Accounts and all other Intellectual Property Rights of CTI, regardless of the nature of such rights.

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

1.10 **"Effective Date"** means the date this Agreement is executed by Subscriber.

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

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

1.13 **"Party"** means each of CTI and Subscriber.

1.14 **"Cloud Services"** means the various "software as a service" offerings made available for subscription to Subscriber by CTI.

1.15 **"Services Fees"** means the fees payable by Subscriber to CTI for subscribing to any ChargePoint Services as set forth in an applicable purchase order issued by Subscriber and accepted by CTI. Services Fees shall also include all fees payable by Subscriber, if any, pursuant to the provisions of the Flex Billing Addendum set forth at the end of this Agreement.

1.16 **"Subscriber Authorized User"** means any person authorized by Subscriber to access and use its Charging Stations.

2. **CTI'S RESPONSIBILITIES AND AGREEMENTS.**

2.1 **NETWORK OPERATION.** CTI agrees to provide and shall be solely responsible for: (i) provisioning and operating, maintaining, administering and supporting the ChargePoint Network infrastructure (other than Subscriber's Charging Stations and infrastructure for transmitting data from Networked Charging Stations to any ChargePoint Network operations center); (ii) provisioning and operating, maintaining, administering and supporting the ChargePoint Web Portal; and (iii) operating the ChargePoint Network in compliance with all applicable laws.

2.2 **LIMITATIONS ON RESPONSIBILITY.** CTI shall not be responsible for, and makes no representation or warranty with respect to the following: (i) Specific location(s) or number of Charging Stations now, or in the future, owned, operated and/or installed by persons other than Subscriber, or the total number of Charging Stations that comprise the ChargePoint Network; (ii) Continuous availability of electrical service to any of Subscriber's Charging Stations; (iii) Continuous availability of any wireless or cellular communications network or Internet service provider network necessary for the continued operation by CTI of the ChargePoint Network; (iv) Availability of or interruption of the ChargePoint Network attributable to unauthorized intrusions; and/or (v) Charging Stations that are not registered with and activated on the ChargePoint Network.

3. **SUBSCRIBER'S RESPONSIBILITIES AND AGREEMENTS.**

3.1 **GENERAL.** Subscriber shall be solely responsible for: (i) Keeping current its contact information, email address for the receipt of notices hereunder, and billing address for invoices; (ii) updating on the ChargePoint Web Portal, within five (5) business days, the registered location to which any of Subscriber's Charging Stations are moved; (iii) The non-warranty maintenance, service, repair and/or replacement of Subscriber's Networked Charging Stations as needed, including informing CTI of the existence of any Networked Charging Stations that are non-operational and not intended to be replaced or repaired by Subscriber; (iv) registration of and activation of Subscriber's Charging Stations

on the ChargePoint Network; and (v) Operating and maintaining Subscriber's Networked Charging Stations in compliance with all applicable laws.

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

3.3 FURTHER AGREEMENTS OF SUBSCRIBER MADE IN CONNECTION WITH REGISTRATION OF CHARGING STATIONS ON THE CHARGEPOINT NETWORK AND USE OF CHARGEPOINT SERVICES. Subscriber further acknowledges and agrees with CTI that: (i) Subscriber will not remove, conceal or cover the CTI Marks or any other markings, labels, legends, trademarks, or trade names installed or placed on the Networked Charging Stations or any peripheral equipment for use in connection with Subscriber's Charging Stations; (ii) Subscriber shall comply with, and shall have responsibility for and cause its employees and agents accessing or using ChargePoint Web Portals to comply with, all of the rules, regulations and policies of CTI; (iii) Subscriber shall be responsible for using the ChargePoint Services in compliance with this Agreement, and in particular, shall: (A) use commercially reasonable efforts to prevent unauthorized access to Purchased ChargePoint Services, (B) not sell, resell, license, rent, lease or otherwise transfer the ChargePoint Services to a third party, (C) not interfere with or disrupt the integrity of the ChargePoint Network, the ChargePoint Services or any third party data contained therein, and (D) not attempt to gain unauthorized access to the ChargePoint Network or the ChargePoint Services or their related systems or networks. All data collected by CTI in connection with the operation of the ChargePoint Network shall be owned by CTI; provided that Subscriber Shall have the right to access and use such data, as it pertains to Subscriber's Charging Stations, through a subscription to one or more ChargePoint Services.

4. FEES AND PAYMENT FOR PURCHASED CHARGEPOINT SERVICES.

4.1 SERVICES FEES. Subscriber shall pay all Services Fees within thirty (30) days of its receipt of an invoice with respect thereto. Except as otherwise specified herein, (i) Services Fees are quoted in and payable in U.S. Dollars, (ii) Services Fees are based on Subscriber's choice of subscription to the ChargePoint Services and not on actual usage, (iii) payment obligations are non-cancelable and are non-refundable, and (iv) Services are non-transferable; provided that, Services may be transferred to a Charging Station that is purchased by Subscriber to replace a de-commissioned, previously networked, Charging Station.

4.2 OVERDUE SERVICES FEES. If any invoiced Services Fees are not received by CTI by the due date, then such charges: (i) may accrue late interest at the rate ("**Interest Rate**") of one and one-half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until paid, and (ii) in the event Subscriber has not paid Services Fees within thirty (30) days of the due date, CTI may condition future Services renewals and acceptance of purchase orders for additional ChargePoint Services on payment terms other than those set forth herein.

4.3 ACCELERATION AND SUSPENSION OF CHARGEPOINT SERVICES. If any amount owing by Subscriber under this Agreement is more than thirty (30) days overdue, CTI may, without otherwise

limiting CTI's rights or remedies, terminate this Agreement, and/or suspend the use by Subscriber of the ChargePoint Services until such amounts are paid in full.

4.4 PAYMENT DISPUTES. CTI shall not exercise its rights under Section 4.2 (Overdue Services Fees) or Section 4.3 (Acceleration and Suspension of ChargePoint Services) if the applicable charges are under reasonable and good faith dispute and Subscriber is cooperating diligently to resolve the dispute.

5. AVAILABLE SERVICES. A description of the various ChargePoint Services currently available for subscription is included in the ChargePoint web site <http://www.mychargepoint.net>. CTI may make other ChargePoint Services available from time to time, and may amend the features offered with respect to any ChargePoint Service at any time and from time to time.

6. PROPRIETARY RIGHTS.

6.1 RESERVATION OF RIGHTS. CTI reserves all right, title and interest in and to the ChargePoint Services, including all related Intellectual Property Rights. No rights are granted to Subscriber hereunder except as expressly set forth herein. CTI shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable perpetual license to use or incorporate in the ChargePoint Services any suggestions, enhancement requests, recommendations or other feedback provided by Subscriber or Subscriber Authorized Users relating to the ChargePoint Services.

6.2 RESTRICTIONS ON USE. Subscriber shall not: (i) create derivative works based on the ChargePoint Services, (ii) copy, frame or mirror any part or content of the ChargePoint Services, other than copying or framing on Subscriber's own intranets or otherwise for Subscriber's own internal business purposes, (iii) reverse engineer any Charging Station or Cloud Service, or (iv) access the ChargePoint Network, any ChargePoint Web Portal or the ChargePoint Services for any improper purpose whatsoever, including, without limitation, in order to (A) build a competitive product or service, or (B) copy any features, functions, interface, graphics or "look and feel" of any ChargePoint Web Portal or the ChargePoint Services.

6.3 GRANT OF LIMITED LICENSE FOR CTI MARKS.

(a) LICENSE GRANT. Subscriber is granted under this Agreement the nonexclusive privilege of displaying the CTI Marks during the Term of this Agreement in connection with Subscriber Charging Stations. Subscriber warrants that it shall not use any of the CTI Marks for any products other than its Networked Charging Stations. From time to time, CTI may provide updated trademark usage guidelines with respect to Subscriber's use of the CTI Marks which will be made available on a ChargePoint Web Portal, in which case Subscriber thereafter shall comply with such guidelines. If no such guidelines are provided, then for each initial use of the CTI Mark, Subscriber must obtain CTI's prior written consent, which shall not be unreasonably withheld or delayed, and after such consent is obtained, Subscriber may use the CTI Mark in the approved manner. The CTI Marks may not be used under this Agreement as a part of the name under which Subscriber's business is conducted or in connection with the name of a business of Subscriber or its Affiliates.

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

(c) **TERMINATION AND CESSATION OF USE OF CTI MARKS.** Upon termination of this Agreement, Subscriber will immediately discontinue all use and display of the name "CTI" and the CTI Marks.

7. LIMITATIONS ON CTI'S AND SUBSCRIBER'S LIABILITY.

7.1 LIMITATION OF LIABILITY. CTI's aggregate liability under this Agreement shall not exceed the greater of (i) aggregate Services Fees paid by Subscriber to CTI in the calendar year prior to the event giving rise to the Claim or (ii) Ten Thousand Dollars (\$10,000).

7.2 EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES. REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOST REVENUE OR PROFIT, LOST OR DAMAGED DATA, BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE THE CHARGEPOINT NETWORK, ANY CHARGEPOINT SERVICES, THIS AGREEMENT OR OTHERWISE OR BASED ON ANY EXPRESSED, IMPLIED OR CLAIMED WARRANTIES BY SUBSCRIBER NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT. BECAUSE SOME STATES OR JURISDICITON DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY; PROVIDED THAT, IN SUCH INSTANCES, CTI'S LIABILITY IN SUCH CASES SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

7.3 EXCLUSION OF WARRANTIES. THE CHARGEPOINT NETWORK AND THE CHARGEPOINT SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" FOR SUBSCRIBER'S USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THE ABOVE EXCLUSION OF IMPLIED WARRANTIES MAY NOT APPLY; PROVIDED THAT, IN SUCH INSTANCES THE IMPLIED WARRANTIES GRANTED BY CTI SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

7.4 ELECTRICAL, CELLULAR AND INTERNET SERVICE INTERRUPTIONS. Neither CTI nor Subscriber shall have any liability whatsoever to the other with respect to damages caused by: (i) electrical outages, power surges, brown-outs, utility load management or any other similar electrical service interruptions whatever the cause; (ii) interruptions in wireless or cellular service linking Networked Charging Stations to the ChargePoint Network; (iii) interruptions attributable to unauthorized ChargePoint Network intrusions; or (iv) interruptions in services provided by any Internet service provider not affiliated with CTI. This includes the loss of data resulting from such electrical, wireless, cellular or Internet service interruptions.

7.5 CELLULAR CARRIER RESTRICTIONS. IN ORDER TO DELIVER THE CHARGEPOINT SERVICES, CTI HAS ENTERED INTO CONTRACTS WITH ONE OR MORE UNDERLYING WIRELESS SERVICE CARRIERS (THE "UNDERLYING CARRIER"). SUBSCRIBER HAS NO CONTRACTUAL RELATIONSHIP WITH THE UNDERLYING CARRIER AND SUBSCRIBER IS NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN CTI AND THE UNDERLYING CARRIER. SUBSCRIBER UNDERSTANDS AND AGREES THAT THE UNDERLYING CARRIER HAS NO LIABILITY OF ANY KIND TO SUBSCRIBER, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. SUBSCRIBER AGREES TO INDEMNIFY AND HOLD HARMLESS THE UNDERLYING CARRIER AND ITS OFFICERS, EMPLOYEES, AND AGENTS AGAINST ANY AND ALL CLAIMS, INCLUDING WITHOUT LIMITATION CLAIMS FOR LIBEL, SLANDER, OR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH, ARISING IN ANY WAY, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH USE, FAILURE TO USE, OR INABILITY TO USE THE WIRELESS

SERVICES EXCEPT WHERE THE CLAIMS RESULT FROM THE UNDERLYING CARRIER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THIS INDEMNITY WILL SURVIVE THE TERMINATION OF THE AGREEMENT. SUBSCRIBER HAS NO PROPERTY RIGHT IN ANY NUMBER ASSIGNED TO IT, AND UNDERSTANDS THAT ANY SUCH NUMBER CAN BE CHANGED. SUBSCRIBER UNDERSTANDS THAT CTI AND THE UNDERLYING CARRIER CANNOT GUARANTEE THE SECURITY OF WIRELESS TRANSMISSIONS, AND WILL NOT BE LIABLE FOR ANY LACK OF SECURITY RELATING TO THE USE OF THE SERVICES. THE SUBSCRIBER MAY NOT RESELL THE SERVICE TO ANY OTHER PARTY.

8. TERM AND TERMINATION.

8.1 TERM OF AGREEMENT. This Agreement shall become effective on the Effective Date and shall continue until the expiration of all of Subscriber's subscriptions to ChargePoint Services.

8.2 SUBSCRIPTION TERM. Subscriptions to ChargePoint Services acquired by Subscriber shall commence on (i) if such services are acquired for use with a new Charging Station, the earlier to occur of (x) the date such new charging station is installed and provisioned on the ChargePoint Network or (y) forty five (45) days after the date such new charging station is installed and (ii) in all other cases, the start date specified in the purchase order related thereto. ChargePoint Services subscribed to by Subscriber shall continue for the applicable subscription term (the "Subscription Term"), unless this Agreement is otherwise terminated, changed or canceled by CTI or Subscriber as allowed by the terms and conditions set forth herein.

8.3 TERMINATION.

(a) BY CTI. This Agreement, all Subscription Terms and Subscriber's continuing access to ChargePoint Services may be immediately suspended or terminated: (i) if Subscriber is in material breach of any of its obligations under this Agreement, and has not cured such breach within thirty (30) days, or five (5) days in the case of any payment default, of the date of its receipt of written notice thereof, (ii) Subscriber becomes the subject of a petition in bankruptcy or any other proceeding related to insolvency, receivership, liquidation or an assignment for the benefit of creditors, (iii) upon the determination by any regulatory body that the subject matter of this Agreement is subject to any governmental regulatory authorization or review that imposes additional costs of doing business upon CTI, or (iv) if, pursuant to the terms of this Agreement, CTI is otherwise permitted the right to terminate upon the occurrence of an event or events.

(b) BY SUBSCRIBER. This Agreement may be immediately terminated by Subscriber without prejudice to any other remedy of Subscriber at law or equity: (i) if CTI is in material breach of any of its obligations under this Agreement, and has not cured such breach within thirty (30) days of the date of its receipt of written notice thereof, or (ii) CTI becomes the subject of a petition in bankruptcy or any other proceeding related to insolvency, receivership, liquidation or an assignment for the benefit of creditors. This Agreement may be terminated by Subscriber for convenience upon the voluntary deactivation and removal from registration via the applicable ChargePoint Web Portal of all Networked Charging Stations owned by Subscriber from the ChargePoint Network, at which time this Agreement shall terminate effective immediately; provided, that Subscriber shall not be entitled to any refund of any Service Fees as a result of such termination for convenience.

8.4 REFUND OR PAYMENT UPON TERMINATION. Upon any termination of this Agreement for cause by Subscriber pursuant to Section 8.3(b)(i), or (ii) the election of CTI to terminate this Agreement pursuant to Section 8.3(a)(iii), CTI shall refund to Subscriber a pro-rata portion of any pre-paid Service Fees based upon the Subscription Term for which such fees were paid and the remaining period of such Subscription Term. Upon any termination for cause by CTI pursuant to Section 8.3(a)(i),

(ii) or (iv) or upon the voluntary removal from registration and activation of all of Subscriber's Network Charging Stations from the ChargePoint Network, Subscriber shall pay any unpaid Service Fees covering the remainder of all Subscription Terms. In no event shall any termination relieve Subscriber of any liability for the payment of Service Fees for any period prior to the termination date.

9. **AMENDMENT OR MODIFICATION.** No modification, amendment or waiver of this Agreement shall be effective unless in writing and either signed or electronically accepted by the party against whom the amendment, modification or waiver is to be asserted.

10. **WAIVER.** The failure of either Party at any time to require performance by the other Party of any obligation hereunder will in no way affect the full right to require such performance at any time thereafter. The waiver by either Party of a breach of any provision hereof will not constitute a waiver of the provision itself. The failure of either Party 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 Party against whom such waiver is sought to be enforced. Any such waiver will be effective only with respect to the specific instance and for the specific purpose given.

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

12. **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 Santa Clara County, California, shall have exclusive jurisdiction over any claim arising under this Agreement.

13. **WAIVER OF JURY TRIAL.** Each Party hereby waives any right to jury trial in connection with any action or litigation arising out of this Agreement.

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

15. **SEVERABILITY.** Except as otherwise specifically provided herein, if any term or condition of this Agreement or the application thereof to either Party will to any extent be determined jointly by the Parties or by any judicial, governmental or similar authority, to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to this Agreement, the Parties or circumstances other than those as to which it is determined to be invalid or unenforceable, will not be affected thereby. If, however such invalidity or unenforceability will, in the reasonable opinion of either Party cause this Agreement to fail of its intended purpose and the Parties cannot by mutual agreement amend this Agreement to cure such failure, either Party may terminate this Agreement for cause as provided herein above.

16. **ASSIGNMENT.** Subscriber may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of CTI (not to be unreasonably withheld). In the event of any purported assignment in breach of this Section 15, CTI shall be entitled, at its sole discretion, to terminate this Agreement upon written notice given to Subscriber. In the event of

such a termination, Subscriber shall pay any unpaid Service Fees covering the remainder of the Service Term for any accepted Purchase Orders. In no event shall any termination relieve Subscriber of any liability for the payment of Service Fees or Session Processing Fees for any period prior to the termination date. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. CTI may assign its rights and obligations under this Agreement.

17. NO AGENCY OR PARTNERSHIP CREATED BY THIS AGREEMENT. CTI, in the performance of this Agreement, is an independent contractor. In performing its obligations under this Agreement, CTI shall maintain complete control over its employees, its subcontractors and its operations. No partnership, joint venture or agency relationship is intended by CTI and Subscriber to be created by 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. All purchase orders issued by Subscriber shall state that such purchase orders are subject to all of the terms and conditions of this Agreement, and contain no other term other than the type of Subscription, the number of stations for which such Subscription is ordered, the term of such subscriptions and applicable subscription fees. To the extent of any conflict or inconsistency between the terms and conditions of this Agreement and any purchase order, the Agreement shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in any other documentation shall be incorporated into or form any part of this Agreement, and all such purported terms and conditions shall be null and void.

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.

COULOMB TECHNOLOGIES, INC.

Subscriber

By: _____
(Signature)

By: _____
(Signature)

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

City: _____

City: _____

State: _____ Zip Code: _____

State: _____ Zip Code: _____

Email Address for Notices: _____

Email Address for Notices: _____

Date: _____

Date: _____

FLEX BILLING ADDENDUM

Flex Billing Manager and Flex Billing Service

The Provisions of this Flex Billing Addendum apply in those situations where Subscriber charges Users for the use of its Networked Charging Stations and CTI provides management, collection and/or processing services related to such charges.

Applicable Terms and Conditions.

1. Definitions. The following defined terms shall apply for purposes of this Flex Billing Addendum (this "Addendum")

"Net Session Fees" means the total amount of Session Fees collected on behalf of the Subscriber by CTI less Session Authorization Fees, Session Processing Fees and Taxes and Regulatory Charges (as defined below), if any, required by law to be collected by CTI from Users in connection with the use of Networked Charging Stations. Except as required by law, Subscriber shall be responsible for the payment of all Taxes and Regulatory Charges incurred in connection with the Networked Charging Stations.

"Session" or "Charging Session" means a session during which a User is using Subscriber's Networked Charging Station to charge his or her electric vehicle and last for a continuous period of time measuring not less than five (5) minutes commencing when a User has accessed such Networked Charging Station and ending when such User has terminated such access.

"Session Authorization Fees" means the fees payable by the Subscriber to CTI to pre-authorize a Charging Session at a Commercial Networked Charging Station. The Session Authorization Fees is set forth below.

"Session Fees" means the fees set by the Subscriber for a Charging Session, including any applicable Taxes and/or Regulatory Charges.

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

"User" means any person using Networked Charging.

2. FLEX-BILLING SERVICE FOR NETWORKED CHARGING STATIONS.

2.1. SESSION FEES. Subscriber shall have sole authority to determine and set in real-time the Session Fees (which shall include all applicable Taxes and Regulatory Charges, each as defined below) applicable to Subscriber's Networked Charging Stations.

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

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

3. TAXES AND REGULATORY CHARGES. Unless required by law or otherwise stated herein, Session Authorization Fees and Session Processing Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, but not limited to, value added, sales, local, city, state or federal taxes ("**Taxes**") or any fees or other assessments levied or imposed by any governmental regulatory agency ("**Regulatory Charges**"). Subscriber is responsible for the payment of all Taxes and Regulatory Charges incurred in connection with Session Fees; *provided that*, CTI is solely responsible for all Taxes and Regulatory Charges assessable based on CTI's income, property and employees. Where CTI is required by law to collect and/or remit the Taxes or Regulatory Charges for which Subscriber is responsible, the appropriate amount shall be invoiced to Subscriber and deducted by CTI from Session Fees, unless Subscriber has otherwise provided CTI with a valid tax or regulatory exemption certificate or authorization from the appropriate taxing or regulatory authority.

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

<u>Fee Schedule¹</u>	<u>Transaction Volume</u>	<u>For Each Charging Session using ChargePass™ Card (per Host)</u>	<u>For Each Charging Session Using Credit Card (per Host)</u>
Session Authorization Fee²	<1,500/month	\$0.40 per Session	\$0.40 per Session
	<3,000/month	\$0.35 per Session	\$0.35 per Session
	<6,000/month	\$0.30 per Session	\$0.30 per Session
	>6,000/month	\$0.25 per Session	\$0.25 per Session
Session Processing Fee³	<1,500/month	5.0% of Session Fees	6.0% of Session Fees
	<3,000/month	4.5% of Session Fees	5.5% of Session Fees
	<6,000/month	3.5% of Session Fees	4.0% of Session Fees
	>6,000/month	3.0% of Session Fees	3.5% of Session Fees

¹ Subscriber is required to separately subscribe for the ChargePoint™ Standard Service in order to activate its Charging Stations on the ChargePoint™ Network.

² The Session Authorization Fee may not be increased more than once in any twelve (12) month period nor more than the greater of (i) ten percent (10%) or (ii) the Consumer Price Index rate of change promulgated by the United State Bureau of Labor Statistics with respect to the 12-month period just then ended when any notice of change is given by CTI to Subscribers.

³ CTI may increase the Session Processing Fee payable pursuant to this Agreement at any time after July 1, 2011, upon not less than one hundred eight (180) days notice (the "**Notice Period**") given by electronic notice posted to the Subscriber Portal and sent to each individual Subscriber Account, and any such change shall thereafter be binding and enforceable with respect to Subscriber after the expiration of such Notice Period; *provided, further*, that the Session Processing Fee may not be increased by more than one percentage point in any twelve (12) month period, nor in the aggregate, increased to more than twenty percent (20.00%) of Session Fees at any time.

Appendix A to Flex Billing Addendum: Account Information Form for Flex Billing Services

Complete and fax this form to Coulomb Technologies Sales Operations (+1- 214-716-1244) to sign up for Flex Billing services. All fields are required (except where noted).

Business Info

Business Legal Name: _____

Business Legal Address: _____
(Number) (Street) (City) (State/Province) (Postal Code) (Country)

Business Federal Tax ID: _____

Individual Point of Contact

Contact Name: _____

Contact Phone: _____

Contact Fax: _____

Contact Email Address: _____

Bank Account Info

Bank Name: _____

Bank Address: _____
(Number) (Street) (City) (State/Province) (Postal Code) (Country)

Bank Routing number or Swift Code: _____

Bank's Account number (if applicable): _____

Business's Account Number: _____

Business's Account Name: _____
(Remit To Name, if different than Business Legal Name)

Business's Account Address: _____
(Remit To Address, if different than Business Legal Address)

Business's Federal Tax ID: _____
(if Remit To Entity is if different than Business Legal Entity)

Additional Information (for Non-US Customers Only)

Intermediary Bank Name: _____

Intermediary Bank Address: _____
(Number) (Street) (City) (State/Province) (Postal Code) (Country)

Intermediary Bank Routing or Swift Code: _____

Intermediary Bank' Account number if applicable: _____

COULOMB TECHNOLOGIES, INC.
Limited Product Warranty

This Limited Product Warranty applies to Charging Stations and/or related products ("**Products**") acquired under the ChargePoint America® Station Award Agreement between you and Coulomb Technologies, Inc. ("**COULOMB**").

LIMITED WARRANTY: Subject to the exclusions from warranty coverage set forth below, COULOMB warrants that the Product will be free from any defects in materials and/or workmanship (the "**Limited Warranty**") for a period commencing on the date of the initial installation of the Product and ending on December 31, 2013, or one (1) year after the date of the initial installation, whichever is greater (the "**Warranty Period**"). If the Product becomes defective in breach of this Limited Warranty, COULOMB will, upon written notice of the defect received during the Warranty period, either repair or replace, at Coulomb's election, the Product if it proves to be defective; *provided*, that COULOMB will not be responsible for the cost of any labor associated with the repair or replacement of any defective Product. Notwithstanding anything to the contrary contained in this paragraph, with respect to any defect in materials and/or workmanship occurring during the period commencing on the date of installation and ending one (1) year thereafter, COULOMB shall pay for the costs of labor incurred in curing such defect, subject to a cap of two hundred dollars (\$200.00) per incident.

FIVE-YEAR PARTS ONLY EXTENDED WARRANTY (Additional Charge Applies): Subject to the exclusions from warranty coverage set forth below, if you have purchased a five (5) year extended warranty ("**Five-Year Extended Warranty**"), and if the Product becomes defective in breach of the Limited Warranty above at any time during the five (5) year period after the date of the initial installation of the Product (the "**Five-Year Warranty Period**"), COULOMB will, upon written notice of the defect received during the Five-Year Warranty Period, either repair, provide replacement parts for the defective parts of the Product or replace the Product, at Coulomb's election, if it proves to be defective; *provided*, that COULOMB will not be responsible for the cost of any labor associated with the repair or replacement of any defective Product.

COULOMB's Options: You acknowledge that replacement products provided by Coulomb under each of the Limited Warranty and the Five-Year Extended Warranty may be remanufactured or reconditioned Products or, if the exact Product is no longer manufactured by COULOMB, a Product with substantially similar functionality ("**Replacement Products**"). Any Replacement Products so furnished will be warranted for the remainder of the original Warranty Period or Five-Year Warranty Period, as the case may be, or ninety (90) days from the date of delivery of such Replacement Product, whichever is greater.

EXCLUSIONS FROM LIMITED WARRANTY AND FIVE-YEAR EXTENDED WARRANTY

IMPORTANT: The Limited Warranty and, if purchased, the Five Year Extended Warranty on your Product shall not apply to defects, or service repairs, resulting from any of the following:

- Alteration or modification of the Product in any way not approved in writing by COULOMB.
- Vandalism.
- Abuse, damage or otherwise being subjected to problems caused by negligence (including but not limited to physical damage from being struck by a vehicle) or misapplication, or use of the Products other than as specified in the applicable COULOMB user's manual for the Product in question provided to you by COULOMB.
- Installation or relocation of the Products unless performed by COULOMB or by a COULOMB authorized installer or service provider.
- Improper site preparation or maintenance.
- Damage as a result of accidents, extreme power surge, extreme electromagnetic field, acts of nature or other causes beyond the control of COULOMB.
- Use of the Product with software, interfacing, parts or supplies not supplied by COULOMB.

You are responsible for the proper installation and maintenance of the Product. Any service or repairs beyond the scope of the Limited Warranty or the Five-Year Extended Warranty above are subject to COULOMB's then prevailing current labor rates and other applicable charges.

Third Party Products. The above Limited Warranty and Five-Year Extended Warranty are exclusive of products manufactured by third parties ("**Third Party Products**").

OBTAINING WARRANTY SERVICE

To obtain warranty service you must: (a) obtain a return materials authorization number ("RMA#") from COULOMB by contacting 1-877-370-3802 (or for customers outside the U.S., contact 408-370-3802) and ask for Customer Service, and (b) deliver the Product, in accordance with the instructions provided by COULOMB, along with proof of purchase in the form of a copy of the bill of sale including the Product's serial number, contact information, RMA# and detailed description of the defect, in either its original package or packaging providing the Product with a degree of protection equivalent to that of the original packaging, to COULOMB at the address below. You agree to obtain adequate insurance to cover loss or damage to the Product during shipment. If you obtain an RMA# and return the defective Product as described above, COULOMB will pay the cost of returning the Product to COULOMB. Otherwise, you agree to bear such cost, and prior to receipt by COULOMB, you assume risk of any loss or damage to the Product. COULOMB is responsible for the cost of return shipment to you if the COULOMB Product is found to be defective. Returned products which are found by COULOMB to be not defective, returned out-of-warranty or otherwise ineligible for warranty service will be repaired or replaced at COULOMB's standard charges and shipped back to you at your expense. At COULOMB's sole option, COULOMB may perform repair service on the Product at your facility, and you agree to provide COULOMB with reasonable access to such facility and the Product, as required. On-site repair service is not available outside the United States. All replaced parts, whether under warranty or not, are the property of COULOMB.

WARRANTY LIMITATIONS

THE LIMITED WARRANTY SET FORTH ABOVE IS EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED BY COULOMB, TO THE MAXIMUM EXTENT PERMITTED BY LAW. THERE ARE NO OTHER WARRANTIES RESPECTING THE PRODUCT AND DOCUMENTATION AND SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF COULOMB OR DISTRIBUTOR HAS BEEN INFORMED OF SUCH PURPOSE) OR AGAINST INFRINGEMENT. Some states or jurisdictions do not allow the exclusion of express or implied warranties so the above exclusions may not apply to you. IF ANY IMPLIED WARRANTY CANNOT BE DISCLAIMED UNDER APPLICABLE LAW, THEN SUCH IMPLIED WARRANTY SHALL BE LIMITED IN DURATION TO THE LIMITED WARRANTY PERIOD DESCRIBED ABOVE. NO WARRANTIES APPLY AFTER THE TOTAL WARRANTY PERIOD. Some states or jurisdictions do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you. NO AGENT OF COULOMB IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF COULOMB. COULOMB SPECIFICALLY DOES NOT WARRANT THAT ANY SOFTWARE WILL BE ERROR FREE OR OPERATE WITHOUT INTERRUPTION. THE REMEDIES IN THIS LIMITED PRODUCT WARRANTY ARE YOUR SOLE AND EXCLUSIVE REMEDIES.

LIMITATIONS OF LIABILITY

You acknowledge and agree that the consideration which you paid to COULOMB or one of its authorized distributors does not include any consideration by COULOMB or one of its authorized distributors of the risk of consequential, indirect or incidental damages which may arise in connection with your use of, or inability to use, the Product. THUS, COULOMB OR ONE OF ITS AUTHORIZED DISTRIBUTORS WILL NOT BE 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, THIS PRODUCT OR THE SERVICES, UNDER ANY THEORY OF LIABILITY, WHETHER IN AN ACTION IN CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL OR EQUITABLE THEORY, EVEN IF COULOMB KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE CUMULATIVE LIABILITY OF COULOMB OR ONE OF ITS AUTHORIZED DISTRIBUTORS FOR ALL CLAIMS WHATSOEVER RELATED TO THIS PRODUCT OR THE SERVICE WILL NOT EXCEED THE PRICE YOU PAID FOR THIS PRODUCT. THE LIMITATIONS SET FORTH HEREIN ARE INTENDED TO LIMIT THE LIABILITY OF COULOMB AND SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. 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. THIS LIMITED PRODUCT WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.

ADDITIONAL INFORMATION

This Limited Product Warranty is valid for U.S.A. and Canada only.

This Limited Product Warranty shall be governed by and construed in accordance with the laws of the State of California, U.S.A., exclusive of its conflict of laws principles. The U.N. Convention on Contracts for the International Sale of Goods shall not apply.

Except to the extent inconsistent with the above-referenced ChargePoint America™ Station Award Agreement, this Limited Product Warranty is the entire and exclusive agreement between you and COULOMB with respect to its subject matter, and any modification or waiver of any provision of this statement is not effective unless expressly set forth in writing by an authorized representative of COULOMB.

The Limited Product Warranty is not transferable by you to anyone else.

All inquiries or claims made under this Limited Product Warranty must be sent to COULOMB's address as follows:

Coulomb Technologies, Inc.
1692 Dell Avenue
Campbell, California 95008-6901
Tel: 408-370-3802
Fax: 408-370-3847
Email: service@coulombtech.com