



## SOFTWARE AS A SERVICE (SaaS) SUBSCRIPTION AGREEMENT FOR OCPP COMPLIANCE TEST TOOL (OCTT)

This **Software as a Service (SaaS) Subscription Agreement** (“**Agreement**”) is made as of ..... (“**Effective Date**”) by and between **Open Charge Alliance**, a foundation (Stichting in Dutch) organized under the laws of The Netherlands, with official registered office in Arnhem and place of business at Westervoortsedijk 73 Building KB, Arnhem duly represented in this matter by Mr. O. Caron, Director duly authorized for the purposes hereof (“**The Alliance**”) and....., with a registration number of .....having its principal place of business at ..... (“**Subscriber**”). The Alliance and Subscriber may also hereinafter be referred to collectively as the “**Parties**,” or individually as each “**Party**.”

### 1. **DEFINITIONS**

“**Affiliate**” means the any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Subscriber.

“**Agreement**” means this Software (SaaS) Subscription Agreement together with any Order Form, and appendices executed by The Alliance and the Subscriber.

“**Anniversary Date**” means the last date of each calendar year, OCTT subscriptions are aligned with the calendar year.

“**Applicable Privacy Laws**” means all applicable data protection legislation, regulations and rules related to data security, data integrity and the safeguarding of personal information and those data protection laws applicable to The Alliance and Subscriber in the European Union as set forth under the General Data Protection Regulation (GDPR).

“**Content**” means 1) the OCPP Compliance Test Tool (OCTT), the Licensed Testcases included in the tool and 3) any documentation and tools included in and with OCTT as defined within this Agreement.

“**Internal Use**” means the use by employees of Subscriber in Subscriber's internal operations but does not include access to Content by, or use of Content in the provisions of services to, Subscriber's clients or customers. Internal Use also includes use of the subscribed Content by contractors of Subscriber, as long as Subscriber assumes full responsibility for the compliance with this Agreement in such use. Use of Content (or any part thereof) for the benefit of others, whether by means of a software as a service offering, service bureau application, application service provider, outsourcing or other means of providing service to any third party shall not be considered Internal Use.

“**Licensed Testcases**” means the set of Testcases for the OCPP version(s) the subscriber has acquired a usage license for.

“**Documentation**” means, collectively, technical information and materials, in written or electronics form, delivered with the Service by The Alliance to Subscriber and that are intended for Use in connection with the Service.

“**Fees**” means the fees and charges specified in an Order Form, including both recurring and one-time charges.

“**Modification**” means a change to the Service that changes or enhances the OCTT SaaS Service delivered.

“**Order Form**” means any validly executed Order Form between The Alliance and Subscriber.

“**OCTT Instance**” means a single copy of the OCTT software running on a physical or virtual server. If Subscriber has or runs multiple copies of the OCTT software on the same or different physical or virtual server(s), each counts as a separate instance. Each instance of OCTT can be used to test a single Charging Station or Management System at a time.

"**Proprietary Information**" means (i) with respect to The Alliance, Service, and Documentation and any complete or partial copies thereof, the Service Concepts, third-party database, and any benchmark or survey results; (ii) information relating to the respective technologies, Service, strategies, trade secrets, internal operating environments, products, Subscriber lists and business of either Party; (iii) other documents or information customarily regarded as being proprietary or confidential; (iv) information reasonably identifiable as the confidential or proprietary information of The Alliance or Subscriber.

"**Service**" means the offered Service as defined in Appendix A. i.e. (i) all products and Service specified and agreed upon in this Agreement and Appendices hereto for testing OCPP version(s), delivered to Subscriber hereunder, including the Content, but excluding any third-party database and third-party products; (ii) any releases, versions, or correction levels of the Service as contemplated by this Agreement; and (iii) any complete or partial copies of any of the foregoing.

"**Service Concepts**" means the concepts, techniques, ideas, and know-how embodied and expressed in any computer programs included in the Service, including their structure, sequence and organization.

"**Subscriber Data**" means any data, information or material provided or submitted by Subscriber or Users to the Service in the course of using the Service.

"**Term**" means the term specified in the Order Form and each subsequent renewal.

"**Updates**" means all upgrades, modified versions, or updates, whether provided to the Subscriber by The Alliance through maintenance and support services or otherwise at any time.

"**Use**" means to directly or indirectly load, execute, access, employ, utilize, store, or display the Service.

"**User(s)**" means Subscriber employees who are authorized to Use the Service and have been supplied credentials for OCTT by The Alliance at Subscriber's request.

## **2. LICENSE GRANT AND TERMINATION PREVIOUS LICENSING AGREEMENT**

- 2.1. Subject to the terms and conditions of this Agreement (including the obligation to pay Fees) The Alliance hereby grants Subscriber a non-exclusive, non-transferable, worldwide right to Use the Service, solely for Subscriber's Internal Use, subject to the terms and conditions of this Agreement for the period Subscriber has a paid subscription. As such Subscriber receives for each paid subscription one (1) OCTT Instance containing all Licensed Testcases with the right to have registered Users perform tests for Internal Use. Each OCTT Instance will support one User to test a single system (Charging Station or Management System) at a time whereas testing different systems and sharing an OCTT Instance for Internal Use between users by testing at different times is permitted. All rights not expressly granted to Subscriber are reserved by The Alliance; for sake of clarity no license is granted to any Affiliate of Subscriber.
- 2.2. The Parties hereto agree that any SOFTWARE LICENSE AND MAINTENANCE SERVICES AGREEMENT FOR OCPP TOOLKIT SOFTWARE previously agreed between the Parties shall be automatically terminated by the execution of this Agreement once a license for the OCPP 1.6 Testcase Set is acquired and shall be replaced by this Agreement as of the execution of this Agreement.

## **3. RESTRICTIONS ON USE**

- 3.1 Subscriber acquires the right to use to the Licensed Testcases purchased as indicated on the order form and paid for. Only these sets of OCPP testcases will be available in OCTT. Subject to Section 3.5 additional sets of testcases can be purchased at a later time when available and Subscriber decides to acquire them.
- 3.2 Subscriber is responsible for all activity resulting from the Service and shall abide by all applicable local,

state, national and foreign laws, treaties and regulations in connection with Subscriber Use of the Service, including those related to applicable privacy laws, international communications and the transmission of technical or personal data.

- 3.3 Subscriber acknowledges that the Service and its structure, organization and source code constitute valuable trade secrets of The Alliance. Accordingly, Subscriber agrees:
- (a) Not to modify, adapt, alter, translate, or create derivative works from the Service (except as expressly permitted by the Documentation);
  - (b) Not to merge or integrate the Service with other Service or software; or sublicense, lease, rent, loan, or otherwise transfer the Service to any third party, but for the avoidance of doubt, The Alliance acknowledges and agrees that Subscriber shall have an interface to connect the Service to Subscriber's technology to load data into the Service;
  - (c) To not reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Service;
  - (d) To use OCTT or its other Content only for Internal Use and not to provide services to Affiliates or third parties using the Service (e.g., consulting services, service bureau applications or third-party training) or otherwise Use or copy the Service;
  - (e) To notify The Alliance immediately of any security issues found in OCTT so that The Alliance can remediate these and take necessary action. Subscriber will not disclose the fact that a security issue was found in OCTT nor any information regarding the security issue found to any other party until The Alliance has been able to resolve the issue.
  - (f) To notify The Alliance immediately of any non-security issues found in OCTT so that The Alliance can remediate this.
  - (g) To notify The Alliance immediately of any unauthorized Use of any password or account, personal data breach or any other known or suspected breach of security;
  - (h) To report to The Alliance immediately and use reasonable efforts to stop immediately any sharing, copying or distribution of Content that is known or suspected by Subscriber or Subscriber's Users;
  - (i) To not remove, alter, or obscure any proprietary notices (including copyright notices) of The Alliance incorporated with the Service; and
  - (j) Not provide false identity information to gain access to or Use the Service.
- 3.4 Subscriber shall not: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service in any way; (ii) "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iii) reverse engineer or access the Service in order to:
- (a) build a competitive product or Service;
  - (b) build a product using similar ideas, features, functions or graphics of the Service; or
  - (c) copy any ideas, features, functions or graphics of the Service; or
  - (d) Integrate the OCTT in another product; or

(e) Commercially exploit OCTT tool or provide services using the tool

- 3.5 Subscriber is entitled to use the tool only for Internal Use and will notify The Alliance when its use no longer complies with this agreement. When Subscriber's business purpose or actual usage no longer is Internal Use, irrespective whether this is reported by Subscriber or noticed by The Alliance, Subscriber will cease using Content and agrees to sign a new license agreement matching its use and pay the associated license fee. In this case, The Alliance may block the Subscriber's use of OCTT until a new license agreement is effective. In case the required license and support fees cost are less than what is subscribed, this can only change when the subscription is renewed.
- 3.6 Subscriber will have the right to use the number of OCTT instances containing the Licensed Testcases as subscribed via the order form for the period and purpose(s) subscribed, following payment of all applicable fees. The Subscriber will inform The Alliance which users should have access to its instances of OCTT.
- 3.7 Users will be provided access to the OCTT Service upon the Subscriber's request. Users must be an employee of Subscriber or contracted to work for Subscriber directly and have an e-mail address from Subscriber's organization. Users must be persons and the e-mail address used cannot be shared with other people. When multiple persons need access to OCTT simultaneously, Subscriber must request access for each person individually with The Alliance. Subscriber must inform The Alliance when a user no longer uses the Service or has left Subscriber's organization.
- 3.8 Subscriber may use the Service only for the intended and subscribed business purposes and shall not knowingly (and take adequate preventive measures): (i) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (ii) interfere with or disrupt the integrity or performance of the Service or the data contained therein; (iii) attempt to gain unauthorized access to the Service or its related systems or networks; or (iv) perform any action that may disrupt the normal functioning of the service as provided by The Alliance.

#### **4. THE ALLIANCE PROPRIETARY RIGHTS; SUBSCRIBER DATA SECURITY AND DATA BACKUPS.**

- 4.1 The Alliance alone shall own all right, title and interest, including all related intellectual property rights, in and to the Service (specifically excluding all Subscriber Data) and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Subscriber or any other party relating to the Service. This Agreement is not a sale and does not convey to Subscriber any rights of ownership in or related to the Service or the intellectual property rights owned by The Alliance. The Alliance name, logo, and product names associated with the Service are trademarks of The Alliance or third parties, and no right or license is granted to Use them.
- 4.2 The Alliance, at its discretion, reserves the right to make updates to the Service.  
Other than as specified herein, any tools and documentation licensed with or included in the Service may not be copied, in whole or in part, without the express written consent of The Alliance.  
The Alliance shall have the right to use any feedback provided by Client to The Alliance relating to the Services and the documentation in any manner they see fit. As such The Alliance reserves the right to make technical improvements and upgrades to the Service.
- 4.3 Subscriber Data Backups. The Subscriber is solely responsible for maintaining a backup of Subscriber Data and for an orderly and timely recovery of such data in the event that the use of the Service may be interrupted. The Alliance may for internal purposes maintain copies or backups of Subscriber configurations.
- 4.4 Loss of Data. In the event of any act, error or omission, negligence, misconduct, or breach that

compromises or is suspected to compromise the security, confidentiality, or integrity of Subscriber Data or the physical, technical, administrative, or organizational safeguards put in place by The Alliance that relate to the protection of the security, confidentiality, or integrity of Subscriber Data, The Alliance shall, as applicable: (a) notify Subscriber as soon as practicable but no later than five (5) business days of becoming aware of such occurrence; and (b) reasonably cooperate with Subscriber in investigating the occurrence, including making available to Subscriber relevant records, logs, files, data reporting, and other materials. The sub (a) and (b) in this clause shall be sole remedy for Subscriber in case of loss of data.

## **5. CONFIDENTIALITY**

- 5.1 During the Term and for a period of five (5) years thereafter, each Party shall keep confidential, shall not use for itself or the benefit of others, and shall not copy or allow to be copied, in whole or in part, any Proprietary Information other than as reasonably necessary to fulfill the terms of this Agreement and as permitted under the applicable privacy laws. Neither Party shall, without the other Party's prior written consent, disclose, provide, or make available any of the Proprietary Information of the other Party in any form to any person, except to its bona fide employees, officers, or directors whose access is necessary to enable such Party to exercise its rights hereunder.
- 5.2 Each Party agrees to take all reasonable steps and the same protective precautions to protect the Proprietary Information of the other Party from disclosure to third parties as with its own Proprietary and confidential information.
- 5.3 The obligations of confidentiality imposed upon the parties by the foregoing paragraph shall not apply with respect to any alleged Proprietary Information which:
- (a) is known to the recipient thereof prior to receipt thereof from the other Party hereto;
  - (b) is disclosed to said recipient by a third party who has the contractual right to make such disclosure;
  - (c) is or becomes a part of the public domain or public knowledge through no fault of said recipient;
  - (d) is independently developed by the recipient without reference to the disclosing party's Proprietary Information; or
  - (e) is required to be disclosed under operation of law, as long as the Party affected has the opportunity to apply to the applicable legal entity for a protective order.
- 5.4 Each Party will use the same degree of care to protect the other's Proprietary Information as it uses to protect its own Proprietary Information of like nature, but in no circumstances less than reasonable care and in accordance with the applicable privacy laws. Each Party will take appropriate action to address incidents of unauthorized access to the other's Proprietary Information, including promptly notifying the other of the unauthorized access.
- 5.5 Upon the expiration or termination of the Agreement, or on completion of a Party's obligations under the Agreement, each Party shall use its commercially reasonable best efforts to return, or destroy, or cause to be returned or destroyed, in a prompt manner, all materials in any medium that contain, refer or relate to the Proprietary Information of the other Party.

## **6. PAYMENT, TAXES AND RENEWALS.**

- 6.1 Subscriber shall pay before the start of use of its subscription or renewal all fees and other charges to Subscriber's account in accordance with the Fees, charges, and billing terms set forth in the Order Form hereto. The subscription rights end if payment has not been made in time.
- 6.2 Subscriber is responsible for paying for all OCTT Instances ordered for the entire Term, whether or not these OCTT Instances are actively used. Subscriber may add additional OCTT Instances at any time by

- executing an additional written Order Form.
- 6.3 The Alliance may need to revise the license and subscription fees, when needed. Changes in the subscription fees for renewals will be communicated at least three (3) months before the start of the next calendar year and only affect new purchases and renewals as of that moment.
- 6.4 Renewals of the service will be automatically invoiced 90 days before the end of the calendar year and must be paid before the start of the new calendar year. When Subscriber wishes to change the subscription (e.g. reduce the number of OCTT instances being renewed) The Alliance must be notified of this in time so that the correct renewal can be issued.
- 6.5 Subscriber shall pay all applicable current and future taxes on the Fees, including duties and tariffs, imposed upon this Agreement, the possession or use of the Service, and the Service provided hereunder. All Fees are exclusive of taxes. If applicable laws require the withholding of taxes under this Agreement, The Alliance shall notify Subscriber, make the applicable withholding and remit the required tax to the appropriate Dutch government authority. Subscriber agrees to provide The Alliance with complete and accurate billing and contact information. This information includes Subscriber's legal name, street address, e-mail address, and name and telephone number of an authorized billing contact. Subscriber agrees to update this information and to notify The Alliance of any change within thirty (30) days of any change of address.
- 6.6 In case Subscriber has acquired OCTT as member of The Alliance and therefore received a member discount but terminates its membership within 2 years after signing this agreement, Subscriber agrees to pay the undiscounted price (pro-rata) for the remaining 2 years of the acquired OCPP Testcase Set(s) and Activated OCTT Instances, irrespective whether the user will continue to use OCTT or ceases using it. Subscriber will not be able to use the tool until the amount due has been paid.
- 6.7 The Alliance shall be entitled to give written notice to Subscriber of a reasonable price increase for the upcoming calendar year.
- 7. TERM AND TERMINATION**
- 7.1 Subscriptions shall start on the Effective Date of this Agreement and continue until the end of the current calendar year (the period paid for) if at least 90 calendar days. In case there are less than 90 days remaining in the current calendar year, the initial subscription will be until the end of the next calendar year. Subsequent renewals are always for the full calendar year. Additional one-year terms are subject to the version of the Agreement then in effect.
- 7.2 The Alliance may elect to not renew the subscription by giving at least ninety (90) days' written notice to the other Party prior to the end of the then-current Term.
- 7.3 The Alliance will provide the service at least for 3 years following the first signing of this Agreement. This guarantee is not extended by renewing the subscription nor by the purchase of additional instances. The Alliance will notify Subscriber at least one (1) year in advance when the service will be terminated.
- 7.4 The Alliance may suspend or terminate the subscription in case full payment of fees, charges and OCA membership (if applicable) is not made in time by Subscriber.
- 7.5 The Alliance may suspend Subscriber's access to the service or terminate this Agreement at any time prior to the expiration of the then-current Term:
- (a) If Subscriber is in default with respect to any provision of this Agreement and such failure or default continues unremedied for at least thirty (30) days after receipt of written notice; or
  - (b) if the Subscriber breaches any obligation related to Sections 2 - 5 or its obligations related to the protection of The Alliance's Proprietary Information as provided for here. In such instance,



The Alliance, in its sole discretion, may immediately terminate Subscriber's password, account or Use of the Service upon Subscriber's breach of Sections 2 - 5. Notwithstanding the foregoing, nothing in this Section 7.5 b) shall in any way limit or infringe upon the continued access rights that Subscriber shall have to retrieve its data, as provided for within Section 7.6 below; or

- (c) In the event Subscriber became OCA member and acquired OCTT at the discounted price for OCA members but has not paid in full its OCA membership fees in time;

7.6 Upon termination of this Agreement, Subscriber's access to the Service shall be revoked. The Alliance will have no obligation to maintain or provide any Subscriber Data, and will thereafter delete or destroy all copies of Subscriber Data within the Service or otherwise within its possession or control, unless legally prohibited.

7.7 In case a Subscriber in the future requests – after suspension or termination - to subscribe again to the Services, The Alliance may decide at its sole discretion to allow such grant of Services again and if acceptable to renew the subscription The Alliance may demand immediate a) payment of any open invoices b) an administration fee with a minimum of 250 euro. In addition, any prior rebates on the Subscription fee due to an OCA Membership shall no longer apply for Subscriber.

7.8 Termination of this Agreement shall not relieve either Party from its obligations arising hereunder before termination relating to the other Party's Proprietary Information and the protection of The Alliance's proprietary rights.

7.9 Subscriber agrees and acknowledges that The Alliance has no obligation to retain the Subscriber Data, and may delete such Subscriber Data, if Subscriber has materially breached this Agreement, and such breach has not been cured within thirty (30) days of notice of such breach.

## **8. NO INDEMNIFICATION**

8.1 The Services and all information made available by The Alliance under this Agreement are provided on an "AS IS" basis. The Alliance makes no representation or warranty as to the validity of the Services for any particular purpose nor with regard to the ability of Subscriber to the use of Subscriber using the Services, nor with regard to the quality and/or performance of such Services or otherwise in relation to the Services.

8.2 It is acknowledged by Subscriber that third parties may own intellectual property rights in the field of the Services. The Alliance makes no warranty whatsoever that the development, manufacture, licensing, sale or other disposal of the Services does not infringe or will not cause infringement of any intellectual property rights.

8.3 The Alliance shall not be liable for any damages of whatever nature howsoever resulting from the use of the Services or otherwise in connection with this Agreement.

8.4 The Alliance shall be fully indemnified and held harmless by Subscriber from and against any and all third party claims in connection with products and or services by developed, manufactured, licensed, sold or otherwise disposed of by or for Subscriber.

## **9. REPRESENTATIONS AND WARRANTIES**

9.1 The Alliance represents and warrants that:

- (a) it has not placed, nor is The Alliance aware of, any disabling code or any viruses in the Service which would alter, destroy, or inhibit the Service, or its use by Subscriber;
- (b) The Alliance personnel will exercise due care in the provision of any services.

- 9.2 Subscriber represents, warrants and covenants to The Alliance as follows: (i) Subscriber exists under the laws of its own jurisdiction and is not under any contractual obligation that would preclude it from entering into this Agreement or would interfere with the use of the Subscriber Data provided under this Agreement; (ii) Subscriber owns or has properly licensed all rights in the Subscriber Data at all times during the Term; (iii) the Subscriber Data is not, nor will be, in violation of any laws or third party intellectual property rights; (iv) all Subscriber Data and Subscriber's use of the Service does and will comply with all applicable laws, including applicable privacy laws; and (v) neither this Agreement nor the performance of or exercise of rights under this Agreement will violate, conflict with, or result in the breach of any term, condition, or provision of any agreement or legal obligation (whether or not existing at the effective date) to which Subscriber is a party or by which it may be bound, or constitute a default thereunder.
- 9.3 THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION ARE LIMITED WARRANTIES AND ARE THE ONLY WARRANTIES MADE BY THE ALLIANCE WITH RESPECT TO THE SERVICE AND ANY PART THEREOF. THE ALLIANCE MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE ALLIANCE DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL OPERATE CONTINUOUSLY OR WILL BE UNINTERRUPTED OR ERROR-FREE, BUT DOES REPRESENT TO USE ITS COMMERCIALY REASONABLE BEST EFFORTS TO CORRECT AND REMEDY ALL ERRORS IN ACCORDANCE WITH APPENDIX A AND APPENDIX B.
- 9.4 The representations and warranties set forth in the Agreement hereto shall not apply if the Service is not used in accordance with the Documentation and this license agreement.

## **10. LIMITATION OF LIABILITY**

- 10.1 IN NO EVENT WILL THE ALLIANCE BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS OR GOODWILL, LOSS OF USE OR DATA, INTERRUPTION OF BUSINESS, OR FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF SUCH PARTY RECEIVED ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY (EXCEPT AND EXPRESSLY STATED HEREIN), WHETHER OR NOT ANY OF THE MATTERS AFORESAID ARISES IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR MISREPRESENTATION OR BREACH OF STATUTORY DUTY OR ANY DUTY UNDER GENERAL LAW OR ANY OTHER LEGAL THEORY.
- 10.2 THE ALLIANCE'S ENTIRE LIABILITY TO THE SUBSCRIBER UNDER THIS AGREEMENT, REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR MISREPRESENTATION OR BREACH OF STATUTORY DUTY OR ANY DUTY UNDER GENERAL LAW OR ANY OTHER LEGAL THEORY, INCLUDING THE ALLIANCE'S DUTY TO INDEMNIFY AGAINST INFRINGEMENT AS PROVIDED HEREIN WILL NOT EXCEED THE TOTAL FEES PAID TO THE ALLIANCE BY THE SUBSCRIBER FOR THE ASSOCIATED SUBSCRIPTION OR SERVICE DURING THE TERM.

## **11. NOTICE**

- 11.1 The Alliance may give notice by means of a general notice on the Service; electronic mail to Subscriber's e-mail address. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing. Subscriber may give notice to The Alliance (such notice shall be deemed given when received by The Alliance) at any time by registered mail to The Alliance.

## **12. THE ALLIANCE NOT RESPONSIBLE**

- 12.1 The Alliance will not be responsible under this Agreement for: (i) any alteration of the Service made by Subscriber to fit a particular requirement of Subscriber not intended by The Alliance; or (ii) the correction of any defects resulting from Modifications; or (iii) the results of misuse of the Service by Subscriber; or (iv) preparation or conversion of data into the form required for Use with the Service.



### 13. **DISPUTE RESOLUTION**

- 13.1 Any controversy or claim arising out of or relating to this Agreement or involving any dispute regarding the interpretation or breach of this Agreement shall be resolved as follows:
- (a) Upon written request of either Party, both parties shall appoint a designated representative whose task it will be to meet for the purpose of resolving such dispute.
  - (b) Formal proceedings for the resolution of a dispute may not be commenced until the earlier of:
    - (i) The designated representatives concluding in good faith that amicable resolution through continued negotiations does not appear likely;
    - (ii) The expiration of the 30 day period immediately following the initial request to negotiate the Dispute.
- 13.2 In the event the parties are unable to resolve a dispute, the court in Amsterdam, The Netherlands shall apply as set forth in Section 14.3.

### 14. **GENERAL**

- 14.1 **Amendments.** The Alliance may amend this Agreement in writing.
- 14.2 **Assignment.** This Agreement may not be assigned by Subscriber or by operation of law to any other person, persons, firms, or corporations without the express written approval of The Alliance, which consent shall not unreasonably be withheld.
- 14.3 **Governing Law.** This Agreement shall be governed by and construed in accordance with the substantive laws of the Netherlands. This Agreement shall be governed without regard to conflict of laws provisions and without regard to the United Nations Convention on Contracts for the International Sale of Goods and shall exclude the application of the Uniform Computer Information Transactions Act. The parties agree to the exclusive jurisdiction of the courts of Amsterdam, The Netherlands in respect of any disputes arising under this Agreement.
- 14.4 **Force Majeure.** Neither Party shall be responsible for delays or failure of performance resulting from acts beyond the reasonable control of such Party. Such acts shall include, but not be limited to, acts of God, strikes, walkouts, riots, acts of war, terrorism, epidemics, failure of suppliers to perform, governmental regulations, power failure, earthquake, or other disasters. If the anticipated or actual delay or non- performance exceeds thirty (30) calendar days, the other Party may immediately terminate the Agreement by giving notice of termination and such termination will be in addition to the other rights and remedies of the terminating Party under the Agreement.
- 14.5 **Survival of Certain Provisions.** The obligation to pay all accrued Fees, The Alliance's proprietary rights, limitation of liability and the confidentiality obligations set forth in the Agreement shall survive the termination of the Agreement by either Party for any reason.
- 14.6 **Headings.** The titles and headings of the various sections and paragraphs in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever or to explain, modify, or place any construction on any of the provisions of this Agreement.
- 14.7 **Entire Agreement.** This Agreement, forms the entire agreement between the parties and supersedes all previous communications, oral or written, and all other communications between them relating to the subject matter hereof. No representations or statements of any kind made by either Party that are



not expressly stated herein shall be binding on such Party. No provisions in the Subscriber’s purchase orders or other business forms will supersede the terms and conditions of this Agreement, and no supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by a duly authorized representative of each Party to this Agreement.

14.8 **Waiver.** The waiver by either Party of a breach of any provisions of this Agreement by the other Party shall not operate or be construed as a waiver of any subsequent breach by such Party.

14.9 **Compliance with Laws.** By accessing the Service, Subscriber confirms that this Agreement and the performance of any rights and obligations hereof:

- (a) are not restricted by or contrary to any law or regulation applicable to the Subscriber;
- (b) do not require registration or approval under the applicable laws governing Subscriber; and
- (c) will not require termination payments or compulsory licensing under the applicable laws of Subscriber.

14.10 **Counterparts.** Any Order Form or other document relating to this Agreement may be executed in counterparts, each of which may be original or electronic and shall together constitute one and the same binding instrument.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have duly executed this Agreement by their respective duly authorized officers to become effective as of the date first written below.

As agreed by:

As agreed by:

**Open Charge Alliance**

By:

By:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**ORDER FORM**

This Order Form is hereby annexed to and made a part of the Agreement specified above. In each instance in which provisions of this Order Form contradict or are inconsistent with the provisions of the Agreement, the provisions of this Order Form shall prevail and govern solely with respect to the subject matter hereof.

DESCRIPTION	QTY	PER UNIT COST <sup>1</sup>		TOTAL COSTS
		REGULAR	MEMBERS	
(Perpetual) Usage License for OCPP 1.6 Testcase Set <i>Required per OCPP version irrespective the number of instances</i>	2	€ 15.000	€ 6.000	
(Perpetual) Usage License for OCPP 2.0.1 Testcase Set <i>Required per OCPP version irrespective the number of instances</i>	2	€ 15.000	€ 3.000	
(One Time) Activation fee for first OCTT Instance		€ 4.000	€ 2.000	
(Annual) OCTT Subscription fee for first instance (per year) <sup>3</sup>		€ 2.400	€ 1.800	
(One Time) Activation fee per additional OCTT Instance	4	€ 4.000	€ 2.000	
(Annual) OCTT Subscription fee per additional instance (per year) <sup>3</sup>		€ 2.400	€ 1.800	
<b>Total Year 1 OCTT License, Activation and Subscription Fees:</b>				

**\*Subscriber shall be invoiced for €..... as of the Effective Date of this Agreement, and the Fees shall I be due and payable within forty-five (45) calendar days of the invoice date.**

Annual OCTT Subscription Fees are invoiced yearly in October for the next calendar year and must be paid before the start of the next calendar year to renew the subscription. When acquiring OCTT after October 1<sup>st</sup>, the fees for the following calendar year are invoiced at the same moment. OCTT instances are activated as soon as all license and subscription fees as well as OCA membership fees (when applicable) have been paid.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have duly executed this Order Form by their respective duly authorized officers to become effective as of the date first written below.

As agreed by:

As agreed by:

**Open Charge Alliance**

By:

By:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

<sup>1</sup> Members of The Alliance are entitled to a discount provided (as per section 6.6 of this Agreement) they stay member for 2 more years. Choose the correct unit price based on your membership status.

<sup>2</sup> Tick this box to indicate that a license for this OCPP version’s Testcases is desired, only one Testcase Set license is required per OCPP version, irrespective the number of instances. Do not include already acquired licenses.

<sup>3</sup> The Subscription fee is per annum, during the calendar year this is based on the remaining months till the end of the calendar year (pro-rata). When ordering after September 30<sup>th</sup>, the next year is invoiced at the same moment.

<sup>4</sup> Enter the number of units to purchase (additionally), do not include already acquired licenses and instances

**APPENDIX A****SPECIFIC DESCRIPTION OF THE SERVICE**

The service provided by The Alliance to Subscriber consists of:

1. The Subscriber will be granted access to the OCPP Conformance Test Tool (OCTT hereafter) and Content as a SaaS Solution. OCTT is hosted with a Cloud Provider in the EU (currently AWS Ireland but The Alliance may change that when needed)
2. OCTT may be used by Subscriber for Internal Use to test OCPP compliance of Charging Station Management System (CSMS) and Charging Station(s) (CS) using the Licensed Testcases. The scope of the testing with OCTT is limited to the OCPP communication protocol between an CSMS and a CS and does not guarantee the correct functioning of the CSMS and CS itself.
3. OCTT may be used to prepare for OCPP certification of a CSMS or CS. A successful result with all of the testcases of OCTT does not imply or guarantee OCPP certification.
4. OCTT contains the OCPP testcases for the versions Subscriber has licensed (Licensed Testcases). The Alliance has done its utmost to validate the testcases but cannot guarantee these will cover all scenario's, are fault-free or correctly implemented in the tool. In case an issue is found in a testcase, The Alliance will rectify this as soon as possible after publication of an updated Testcase document (if required) in the next release of the tool. Release schedule for OCTT will be communicated separately.
5. Subscriber will have access to the subscribed number of OCTT instances that can be used simultaneously each to test a single CS or CSMS at a time.
6. Subscriber will provide a list of named Users (Name and e-mail address) that need access to OCTT for The Alliance to grant access and provide user credentials for. It is the responsibility for the Subscriber to notify The Alliance in case a named user left the Subscriber's organization and must be revoked. Users must be employees or directly contracted by Subscriber and have an e-mail address of the Subscriber's organization.
7. For all data stored in the cloud solution The Alliance will ensure:
  1. Cloud storage is secure, can only be accessed through OCTT and that data is not accessible to other Subscribers.
  2. Cloud storage is stored in multiple locations using the cloud provider's multi-zone cloud storage service with an availability of at least 99.9%
  3. Cloud storage is backed-up on a daily basis using the backup service of its cloud provider
8. OCTT allows the Subscriber to maintain his/her own configuration settings. This data is stored in the cloud environment that hosts OCTT. The following applies to this data:
  1. Subscriber will maintain its own configuration settings per instance, this data is stored on cloud storage and private to the specific instance it was configured or uploaded to.
  2. OCTT provides import/export functionality for Subscriber to keep a local copy (backup) of Subscriber's configuration settings.
  3. Maximum storage to be used for configuration data is 10MB, this storage is only to be used by Subscriber for storing OCTT configuration files and associated config files (as keystores, etc.)
  4. This data may not contain any harmful data and it is the responsibility of the Subscriber to ensure this. In case The Alliance notices that a Subscriber does upload harmful data, this may lead to suspension or revocation of the service (agreement).
9. OCTT stores a detailed log for each test run the Subscriber initiates. The following applies to this data:
  1. For each test run OCTT will store a separate log file with the communication between OCTT and the System under Test.
  2. The OCTT logfiles are available for download by Subscriber from the tool.
  3. Maximum storage available for test run log files is 1GB. This storage has a retention period of one (1) month, after which log files will be purged automatically without notification.
  4. The Alliance will only access the Subscriber's detail logs files upon request of the Subscriber (e.g. in case of a support request) or after explicit permission from the Subscriber.
10. The Alliance may monitor and gather statistics on the number of logins per user, test case executions their results and the device being tested in order to monitor its operation and the use of the application is in line with the license agreement The Alliance has the right to publish aggregated usage statistics and use anonymized statistics within its own organization and share it with its members.

## APPENDIX B

### SUPPORT

This appendix defines the terms and conditions for Support applicable to the OCTT Subscription. The following definitions have the meanings set forth below:

1. **Defined Terms.** In addition to the terms defined above, the following terms shall have the following meanings whenever used in this or following appendices with initial letters capitalized. Any capitalized term used in this appendix that is not defined herein shall have the meaning attributed to such term as set forth in the Agreement:
  - (a) **“Support”** shall mean The Alliance function which initially processes questions and issues raised by Subscriber Contact(s) regarding the availability or functionality of the Service.
  - (b) **“Infrastructure”** shall mean the (cloud) technical infrastructure The Alliance uses to host OCTT. This does not include the technical infrastructure used by Subscriber to use the Service.
  - (c) **“Service”** or **“System”** shall mean The Alliance OCTT software suite and platform.
  - (d) **“Testcase(s)”** shall mean the (set of) OCPP Testcase(s) Subscriber has licensed that have “Production” or “Validated” status (i.e. have formally been tested, verified and released).
  - (e) **“Subscriber Contact”** shall mean that individual(s) authorized by Subscriber to be the primary interface with The Alliance regarding the Service, and Subscriber shall provide The Alliance with the necessary contact information for this individual. All registered users that Subscriber requested access for to the Service can act as Subscriber Contact.
2. **Support.** The Alliance personnel will be available to help Subscriber Contact(s) to answer questions regarding the use of the Service and to help identify, verify, and resolve problems with the Service or Testcase(s). Support is available during business hours in The Netherlands (Monday through Friday, 9:00 a.m. to 6:00 p.m. local time). No Support is available during public holidays in The Netherlands.
3. **Scope of the support.** Support provided by The Alliance is limited to the Service, the Infrastructure it runs on, and the correct functioning of OCTT and the Testcase(s) available in the tool. Support specifically does not include advise or consultancy on (implementation of) the OCPP specification nor help for validating or debugging problems in Subscriber’s implementation of the OCPP protocol<sup>5</sup>.
4. **Support Channels.** Support is provided only through The Alliance’s ticketing system<sup>6</sup> and all support requests shall be initiated by Subscriber Contact through that system. Support requests raised by (direct) e-mail or phone calls may not be processed. The Alliance will primarily communicate through this ticketing system (which notifies Subscriber Contact of updates by e-mail). The Alliance may contact Subscriber Contact by e-mail or setup an online meeting to clarify, analyze or address a reported issue.
5. **Requesting support.** Subscriber Contacts request support by submitting a support request in The Alliance’s ticketing system<sup>6</sup>. Subscriber Contact shall include all relevant information in this request, including:
  - (a) A brief description of the issue and environment (URL) it was experienced on including the expected behavior and the actual behavior of the system.
  - (b) In case of connectivity or network problems: network traces from multiple locations from which the Service is unavailable

<sup>5</sup> For questions on the OCPP specification, members of The Alliance can join the Technology Working Group

<sup>6</sup> The Alliance’s ticketing system is available on: <https://support.octt.openchargealliance.org>

- (c) In case of problems with a test case (testcase result is ERROR): a clear indication of the testcase being executed and an OCTT logfile of the executed testcase
- (d) In case of a suspected problem with a test case (testcase result is INCONC, FAIL or PASS): a reference to the applicable Functional Requirement (FR) or Use Case from the latest version of the applicable OCPP specification (including Errata) as well as the OCTT logfile of the executed testcase

By raising a support request, Subscriber Contact permits The Alliance to look at the provided test case logs and applicable system logs of their OCTT Instance.

6. **Issue Classification.** Upon receipt of a support request, The Alliance, at its sole discretion, assigns a severity level to a support request according to the following criteria<sup>7</sup>:
- Severity 1 – critical: an incident renders the Service unavailable and affects a large number of users in production;
  - Severity 2 – severe: a significant problem affecting a limited number of users in production and results in the Service being substantially non-functional or inoperative;
  - Severity 3 – medium: an error that causes errors, minor problems for users, or a heavy system load or results in a decrease in the performance in any functionality of the Service, but does not prevent the Subscriber from continuing to use the Service;
  - Severity 4 – minor: an error that results in the Service operating or performing other than as described in the Documentation, but which does not have a material adverse effect on the performance of the Service. This includes issues with a specific Testcase or Testcase group.
  - Severity 5 – low: a deficiency that causes minor problems or inconvenience to users and includes improvements to the Service

7. **Issue Resolution & Response Times.** Since The Alliance is a not-for-profit organization, Support will be provided on a best-effort basis in general. The Alliance will use commercially reasonable efforts to correct reported problems or provide a work-around solution for each severity level as soon as possible where the following dependencies exist and apply:

- Part of the Service is dependent on external suppliers (e.g. the cloud solution is provided by a commercial supplier). In case of problems depending on a solution from the supplier, the SLAs from that supplier take precedence over the support from The Alliance.
- In case a problem is related to the OCPP specification or associated documents, the standard consultation, review and approval processes within The Alliance (e.g. by the Technology Working Group or Compliance Working Group) apply. In case the Technology Working Group or Compliance Working Group decide that the issue will not be addressed in the applicable OCPP release (documentation) no solution may become available.
- A solution to a problem may depend on the next release of OCTT. In that case the timeline for a solution is dependent on the development roadmap and schedule release date(s).

The Alliance aims to achieve the following objectives for its response and resolution times:

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<sup>7</sup> In case a work-around exists or is provided for an issue the severity level of the issue is adjusted accordingly.



- Severity 1 – critical: The Alliance will acknowledge the problem within 1 business day and aims to resolve it the same business day;
- Severity 2 – severe: The Alliance will acknowledge the problem within 1 business day and aims to resolve it within the next 5 business days;
- Severity 3 – medium: The Alliance will acknowledge the problem within 5 business days and aims to resolve it within the next 10 business days;
- Severity 4 – minor: The Alliance will acknowledge the problem within 5 business days and aims to resolve it within the next 25 business days;
- Severity 5 – low: The Alliance will acknowledge the problem within 5 business days and aims to resolve issues within the next 90 business days. Improvement will be added to the development roadmap and have no timeline for implementation.