

## Electric Vehicle Make-Ready Program Agreement

### Part I: Introduction and Participant and Project Eligibility

#### **I. Introduction**

This Electric Vehicle Make-Ready Program Agreement (as amended and in effect from time to time, this “Agreement” or the “Program Agreement”) is made and entered into between Orange and Rockland Utilities, Inc. (“O&R” or the “Company”) and the Participant. The party to this Agreement whose details are reflected by Part II of this Agreement and on whose behalf this Agreement is accepted and signed by an authorized representative is referred to herein as the “Participant.” The Participant may be (1) an O&R electric account holder or customer (“Customer”) eligible to participate in the Company’s Electric Vehicle (EV) Make-Ready Program (the “Program”), or, alternatively (2) an entity responsible for designing, constructing, and commissioning an EV charger site at a Customer location (each, a “Site”), which may also include responsibility for owning, managing, and operating EV charging equipment at a Site (“Developer”), or, alternatively (3) an entity that purchases and owns or controls EV charging equipment once installed at a Site (“Equipment Owner”), or, alternatively (4) the owner or operator of a Site (“Site Host”), which may or may not be the Equipment Owner, or, alternatively (5) a contractor meeting the Company’s approval criteria to install EV charging infrastructure incentivized through the Program (“Approved Contractor”). For clarity, the Participant may be a Customer, or a Developer, or an Equipment Owner, or a Site Host, or an Approved Contractor. All undertakings under this Agreement by the Participant shall in all instances be the undertakings by the Participant on behalf of itself and any third party necessary to the Participant satisfying the Participant’s obligations under this Agreement.

#### **II. Participant and Project Eligibility**

O&R will determine eligibility to participate in the Program based on O&R’s review process, including, in the case of the eligibility of a contractor to be an Approved Contractor, as more particularly set forth as part of the Joint Utilities<sup>1</sup> criteria established for the participation of a contractor as an Approved Contractor in the Program, which criteria is set forth with more particularity as part of the *New York Electric Vehicle Infrastructure Make-Ready Program Participant Guide, Case 18-E-0138* (the “Participant Guide”) and the Implementation Plan of Orange and Rockland Utilities, Inc for a Light-Duty Electric Vehicle Charging Infrastructure Make Ready Program as filed with the State of New York Public Service Commission (the “Implementation Plan”), and also posted to the Joint Utility [website](#) . The Participant Guide and Implementation Plan are incorporated herein by this reference and are available on the Company’s Electric Vehicle Make-Ready Program website (the “Program Website”), and as may be updated from time to time.

The Participant submitted an application to O&R regarding an EV project (the “Project”) for acceptance to the Program (the “Program Application”). The information provided by the Participant as part of the Program Application, including as may be updated by mutual consent of the parties (the “Project Information”) included costs, details and information regarding the Project relied on by the Company to accept the Participant as eligible for participation in the Program. Among other things, the Project Information was material to a determination of the preliminary incentive award (the “Preliminary Incentive Award”) that the Participant is eligible to receive for the Project in accordance with the requirements of the Program. For clarity and the avoidance of doubt, the Participant is participating in the Program with respect to the Project, and any interest by the Participant in additional participation in the Program shall be only as may be determined by O&R based on any further application to the Program by the Participant focused on other EV projects proposed for acceptance to the Program.

<sup>1</sup> The Joint Utilities refers to as a group Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation, and “Joint Utilities” may also refer to activities or proposals that the Joint Utilities are undertaking as a collective, single group.

### III. Agreement Structure

This Agreement includes this Part I: Introduction and Participant and Project Eligibility, Part II: General Project Information, Part III: Terms and Conditions; and all attachments, addenda and amendments hereto referenced hereunder or that reference this Agreement and are signed by the parties hereto. Terms used as defined terms are as defined herein, and as may also be in common use between the parties.

#### Part II: General Project Information

General information and details regarding the Project are set forth as part of this Part II: General Project Information.

#### Participant Information (Project # {ProjectNumber} )

Company Name (full legal name):

Contact:

Title:

Email:

Phone:

#### Approved Contractor Information

Company Name (full legal name):

Contact:

Title:

Email:

Phone:

#### Site Information

Site Host (if different from Participant):

Street Address:

City:

State:

Zip:

Authorization and Acknowledgement from Site Host Confirmed.

#### Project Information

The Participant acknowledges and agrees that the Project Information is accurate to the best knowledge of the Participant. The Participant represents that the Project as constructed will match the Project as reflected by the Project Information, and as summarized here:

##### Basic Project Information

- Number of L2 plugs that can charge simultaneously:
- L2 Chargers use standard plug type (J1772 or CCS):
- Number of DCFC plugs and total kW:
- DCFC plug type
- Site end use:
- Disadvantaged Community Status:
- Future-proofing, if applicable:
- Approved Maximum Incentive Tier:

##### Make Ready Costs of the Project (excluding future-proofing costs, if any)

Eligible Utility-Side Make-Ready Costs:

Eligible Customer-Side Make-Ready Costs:

Total Eligible Make-Ready Costs:

Future-proofing Costs of the Project (excluding make-ready costs) ({data: Program Agreement: Future proof costs as a percent of total costs field} %)

Eligible Utility-Side Future-proofing Costs:

Eligible Customer-Side Future-proofing Costs:

Total Eligible Future-proofing Costs:

**Total Eligible Costs of the Project** (total make-ready costs plus total future-proofing costs):

### Utility-Side Costs and Customer-Side Costs

The parties acknowledge and agree that determinations of “utility-side costs” and “customer-side costs” are important to any determination of incentive awards. “Utility-side costs” are costs to O&R to establish utility services to serve the Participant determined by O&R to be additional costs to the reasonable costs necessary to establish adequate utility services to serve the Participant to which the Participant would otherwise be entitled under the O&R applicable tariff, and such additional costs, if any, may include costs necessary to achieve objectives of the Participant in connection with the Project. Utility-side costs may be allocated to costs associated with making the Project ready for current use given available technology and desired capability, or “make ready” costs; or utility-side costs may be allocated to costs associated with making the Project ready for anticipated future use given anticipated enhancements in future technology and desired enhanced capability, or “future-proofing” costs.

As may be more particularly provided for by the Participant Guide, “customer-side costs” are costs necessary to make a Site ready to accept and operate an EV charger (excluding O&R reasonable costs necessary to establish adequate utility services, and utility-side costs, if any), and customer-side costs eligible for incentives based on a determination made by O&R may include (1) costs for such things as conduit, trenching, and panels needed for an EV charging station, (2) costs as might relate to permitting and electrical design, and (3) utility and back-up power generation charges, if any, for an outage deemed necessary by O&R to connect EV chargers to utility service. For clarity and the avoidance of doubt, an EV charger, as well as associated costs related to the establishment and use of an EV charger will not be determined by O&R to be customer-side costs eligible for incentives. Customer-side costs may also be allocated to make-ready costs and future-proofing costs.

### Future-Proofing

If the Participant proposes to future-proof the Project, then, as part of the Program Application, the Participant will have provided information and details regarding the desire or need to future-proof the Project, including, without limitation, reasonably anticipated additional plugs, parking spaces, or higher capacity equipment to be used to meet the projected future needs of the Site.

O&R may provide incentives towards future-proofing costs consistent with the rules of the Program, with such incentives potentially applied to both utility-side costs and customer-side costs.

Without limitation, future-proofing costs related to the Project (for the deployment of L2 and DCFC EV charging station projects as more particularly provided for by Section 10 hereof) may include:

- Oversized or additional conduit;
- Oversized panels;
- Additional conduit and connections points (including trenching and conduit to additional parking spaces for future chargers);
- Charging station maintenance services; and
- Larger transformers or additional transformers and transformer pads.

For each Site, future-proofing costs eligible for incentives consistent with the Program will be determined on a case-by-case basis and will be limited to no more than ten percent of the Project's make-ready costs, including both utility-and customer-side make-ready costs. All future-proofing costs not deemed eligible for incentives

consistent with the rules of the Program are the responsibility of the Participant; and, in such events, O&R will only conduct any utility-side future-proofing work after securing funding from the Participant.

### Preliminary Incentive Award – Summary

The Preliminary Incentive Award may cover both utility-side costs and eligible customer-side costs. If there are utility-side costs as part of the Project, then the Company may cover part or all of such utility-side costs, which would be considered part of the overall incentives awarded to the Participant. If the utility-side costs associated with the Project total more than the Preliminary Incentive Award to the Participant, then the Participant is responsible for the remainder of the utility-side costs after the Preliminary Incentive Award is subtracted. If there are no utility-side costs, or if the utility-side costs are an amount less than the Preliminary Incentive Award, then the Participant will receive an incentive award for eligible customer-side costs. Proposed incentives related to future-proofing costs (utility-side and customer-side) is calculated separately from proposed incentives related to make-ready costs (utility-side and customer-side).

#### Total Preliminary Incentive Award for the Project:

##### The Responsibility of the Participant for Utility-Side Costs

The Preliminary Incentive Award Applied to Utility-Side Make-Ready Costs:

The Responsibility of the Participant for Utility-Side Make-Ready Costs:

The Preliminary Incentive Award Applied to Utility-Side Future Proofing Costs:

The Responsibility of the Participant for Utility-Side Future-proofing Costs:

##### The Preliminary Incentive Award to the Participant for Eligible Customer-Side Costs

The Total Preliminary Incentive Award to the Participant for Customer-Side Costs:

The parties understand and agree that the final incentive award (the “Final Incentive Award”) made to the Participant may be different than the Preliminary Incentive Award depending on the actual equipment installed, final project costs, and other things. For example (1) work verification may reveal that what is ultimately installed differs from the details outlined in the Project Information, and (2) the final project costs may prove lower than what is proposed as of the date of this Agreement, or the utility-side costs could be greater than anticipated. The parties further understand and agree that (I) if there is a reduction, termination, or claw-back of any part or whole of the Preliminary Incentive Award to the Participant for customer-side costs, then such reduction, termination or claw-back could result in an adjustment of the total incentive award for the Project, and so the Final Incentive Award could be less than the Preliminary Incentive Award and (II) if actual utility-side costs are greater than anticipated, the responsibility of the Participant for the utility-side costs may increase and the Final Incentive Award could be less than the Preliminary Incentive Award.

### Customer-Side Installation Schedule

The Participant is responsible for keeping O&R informed of all information and updates related to the Project, including the customer-side construction efforts and schedule related to the estimated completion date (“Estimated Completion Date”) set forth below.

Estimated Start Date:

Estimated Completion Date:

### Part III: Terms and Conditions

#### **I. INCENTIVES – STRUCTURE AND ELIGIBILITY**

The amount of the financial incentive for the Project is determined by O&R and is consistent with the *New York Public Service Commission (NYPS) Order Establishing Electric Vehicle Infrastructure Make-Ready Program and Other Programs*, issued July 16, 2020, (the “July 2020 Order”) as modified by the *PSC Order Approving Midpoint Review Whitepaper’s Recommendations and Modifications*, issued and effective November 16, 2023 (the

“Midpoint Order”) (the July 2020 Order, the Midpoint Order, and as either may be modified, updated and amended by the PSC from time to time, the “NYPSC Order”). As otherwise provided for hereunder, the Final Incentive Award may be different than the Preliminary Incentive Award. O&R’s determination of incentive amounts is final. Incentives will first cover utility-side costs, as may be applicable, and the remaining available incentive amounts will then go to the Participant to cover eligible customer-side costs. The Participant is responsible for the payment of the balance of costs not covered by incentive, including any cost overruns related to customer-side costs or any increase in utility-side costs. For clarity, incentive payments are designed to offset eligible customer-side make-ready charging infrastructure costs of the Project and shall not be allocated to non-eligible costs of the Project, as more particularly set forth as part of the Participant Guide. Among other things, and as provided by the Participant Guide, eligible costs under the Program do not include any equipment associated with the EV charger itself (e.g., EV chargers, power blocks, modules, mounting hardware). The parties understand and agree that any efforts in furtherance of the Project prior to the Program Agreement being signed on behalf of the Participant and all required information and relevant documents relating to the Project being provided is at the sole discretion and risk of the Participant, including, without limitation, efforts as might relate to customer orders, purchases, or installs of qualifying equipment.

## **II. INCENTIVES – FINAL INSPECTION AND PAYMENT**

The Participant acknowledges and agrees that the Preliminary Incentive Award was made in reliance on the Project Information and the anticipated utility-side costs, and that the Final Incentive Award will depend on the extent to which the Project Information was anticipated and disclosed fully and accurately by the Participant and the actual utility-side costs. Without limitation, if the actual as-built eligible customer-side costs are lower than the anticipated as-built eligible customer-side costs or if the actual utility-side costs are higher than anticipated, then the Final Incentive Award may be lower. At the time of completion of the Project and when installations are completed, the Participant must notify O&R in writing and submit documentation sufficient to enable O&R to determine the Final Incentive Award, including invoices specifying the quantity and cost of all materials purchased and installed, installation costs, and applicable taxes. O&R, in its sole discretion, may request additional documentation, including, but not limited to, time-stamped photographs, on-site or video inspections (post-installation), building permits, cut sheets, and contractor time sheets. The Final Incentive Award will be determined based upon the documentation and, as otherwise provided hereunder, may be lower than the Preliminary Incentive Award, but shall not, in any event, be greater than the Preliminary Incentive Award. Incentive checks payable to the Participant will be sent to the Participant within 90 days of O&R being satisfied with the documentation and inspections necessary to verify the completion of the Project in accordance with the requirements of the Program, and provided that the Participant has otherwise satisfied requests by O&R necessary for O&R to make payment of incentive, including providing to O&R a completed W-9 form and a valid Federal Tax Identification Number. The Participant shall ensure that O&R has sufficient access to the Site to complete inspections necessary to verify completion and operation of the Project in accordance with the requirements of the Program.

## **III. INCENTIVES – FORFEITURE AND REPAYMENT**

TIME IS OF THE ESSENCE with regard to the construction schedule and to include the Estimated Completion Date and completion date of the Project. If the customer-side construction is not completed within one year following the Estimated Completion Date, and if the Participant and O&R cannot at any time come to a mutually agreeable revised completion date, then O&R may deem the Project abandoned and the Participant may forfeit all, or part, of the incentive amount allocated to the Participant. If the Participant abandons the Project after the effective date of this Agreement, or, consistent with the terms and conditions hereof, if O&R deems reasonably that the Project is abandoned, or if O&R terminates the Program Agreement as provided for hereunder, then the Participant shall reimburse O&R upon O&R’s demand for all incentive payments made in connection with the Project, including utility-side costs incurred by O&R.

## **IV. TAX LIABILITY AND CREDITS**

O&R is not responsible for any taxes that may be imposed on the Participant or any other party as a result of participation in the Program (directly or indirectly), including with respect to incentives received under the

Program. O&R recommends that a tax advisor should be consulted regarding any tax consequences of participation in the Program. The Participant must provide to O&R its valid Federal Tax Identification Number and a W-9 form and may be issued an appropriate Federal Tax Form concerning any incentive payment made to the Participant.

**V. FINANCING ACCOMMODATIONS**

O&R acknowledges that the Participant may be subject to financing arrangements in connection with the Project, including by entering into financing agreements with one or more financing parties. O&R agrees to (1) execute any related consents to assignments or acknowledgements reasonably acceptable to O&R, and (2) provide such opinions of counsel as may be reasonably requested by the Participant or the financing party in connection with the financing or sale of the Project at the Participant's cost and expense.

**VI. ASSET OWNERSHIP AND OPERATIONAL CONTROL**

As between the Participant and the Participant's financiers (if any), on the one hand, and O&R, on the other hand, the Participant or the Participant's financiers will be the legal owner of any asset(s) associated with the Project, but subject to the obligations provided for by this Agreement.

**VII. CHANGE OF OWNERSHIP**

The parties acknowledge and agree that ownership of EV charging stations may change or that stations may be upgraded during the term of this Agreement; provided, however, that the number of plugs and the capacity of any charging station does not decrease, and that the Participant continues to meet all performance and reporting obligations of the Program.

**VIII. MULTIPLE PROJECTS**

The parties understand and agree that additional projects proposed to O&R by the Participant shall not propose the same or materially the same eligible services and/or equipment as approved for the Project such as would lead to more than one incentive award for the same or materially the same projects.

**IX. PROGRAM CHANGES**

O&R reserves the right to change, modify, or terminate the Program at any time, with or without notice, and without any liability to the Participant except as expressly stated herein. O&R will honor all written commitments made in the Program Agreement provided prior to the date of any change, modification, or termination of the Program, subject to the Participant meeting the requirements otherwise provided for under this Agreement.

**X. EQUIPMENT REQUIREMENTS**

In order for the Participant to be eligible to receive incentives, the Project must relate to EV infrastructure for the deployment of L2 and DCFC EV charging station projects in the Company's electric service territory, and consistent with the eligibility requirements outlined by the NYPSC Order. The Project must begin construction after July 16, 2020, and must serve light-duty vehicles, defined as vehicles with a gross vehicle weight rating of under 10,000 lbs.

In order for the Participant to be eligible to receive incentives, the Project must also conform to Electric Vehicle Supply Equipment ("EVSE") requirements provided for by the PSC Order. Without limitation, the Midpoint Order provides that any installation funded by the Program shall satisfy the communication standards requirements set forth immediately below:

- Projects that are committed on or after December 16, 2023 and complete installation before November 16, 2024 must use chargers that are International Organization for Standardization (ISO) 15118 hardware capable; and
- Projects that complete installation on or after November 16, 2024, must use chargers that are ISO 15118 hardware and software capable and Open Charge Point Protocol (OCPP) 2.0.1 capable.

If the Participant fails to conform to the EVSE requirements provided for by the PSC Order, then the Participant may be deemed by O&R to not be eligible for any new or unpaid incentives relating to the Program, and, among other things, the Participant may also be subject to claw back of incentives received previously and the revocation of related service related to the Program and the EV charger units may be subject to operation by alternate market providers.

For the Participant to be eligible to receive incentives for curbside charging, if part of the Project, the Participant must demonstrate that each curbside charger is associated with a designated electric vehicle charging-only parking space, and that a framework or mechanism is in place to prevent non-charging vehicles from blocking access to electric vehicle chargers.

#### **XI. CONSTRUCTION REQUIREMENTS – UTILITY-SIDE**

Details regarding the anticipated scope of utility-side work, if needed, have been provided to the Participant and factored into incentive calculations. O&R shall be responsible for construction and maintenance of the utility-side equipment and infrastructure. O&R will coordinate with the Participant on scheduling utility-side work based on Customer readiness managed effectively by the Participant. Among other things, the Participant shall ensure that O&R has sufficient access to the Site to complete construction of utility-sided equipment and infrastructure and continued access to all utility equipment and facilities related to the Project; and, in this regard, the Participant shall arrange with the Site Host for any necessary easements with respect to access necessary to satisfy the objectives of the Project.

#### **XII. CONSTRUCTION REQUIREMENTS – CUSTOMER-SIDE**

The Participant assumes sole responsibility for customer-side construction required to be performed in connection with the Project. Work must be performed by Approved Contractors, and the Participant acknowledges and agrees that all work must be in full compliance with the requirements of applicable laws, rules, and regulations of authorities having jurisdiction. Additionally, the Participant shall complete construction in accordance with any applicable manufacturer’s recommendations. As between the Participant and O&R, the Participant shall be responsible for any necessary maintenance, repair, or replacement of the customer-side EV equipment and infrastructure at the Participant’s sole cost and expense.

#### **XIII. OPERATIONAL REQUIREMENTS**

The Participant shall complete the construction of the customer-sided work and operate the EV chargers in accordance with the requirements of the Program, and also as more particularly provided for by the NYPSC Order. Among other things, the following requirements must be satisfied during the term of the Program Agreement:

- DCFC plugs must be operational 95 percent of the time (annually);
- DCFC charging stations must be operational 99 percent of the time (annually), with a minimum of 50 percent of the plugs considered to be “up” at all times;
- All charging stations in the Program must operate for a minimum of five years; and
- The Project shall display easily identifiable, up-to-date contact information for the Participant on each charging station.

#### **XIV. REQUIRED DOCUMENTATION AND INFORMATION**

In order to participate in the Program and to be eligible to receive incentives, the Participant must provide to O&R the Program Agreement signed on behalf of the Participant, together with all required information and relevant documents relating to the Project. O&R will review all information and documents relating to the Project for eligibility, completeness, and accuracy.

#### **XV. DATA AND INFORMATION SHARING REQUIREMENT**

The sharing of data and information by the Participant with O&R (and to include in all events with any third-party consultant on behalf of O&R) is required for participation in the Program, and the Participant shall ensure that

all parties necessary to the sharing of data and information cooperate fully in the sharing of such data and information, whether Customer, Developer, Equipment Owner, Site Host, or Approved Contractor, as the case might be. With advance notice to the Participant, following completion of the Project, and in order to provide O&R with an opportunity to review the operation of the EV chargers for purposes of evaluating the performance of the Program, the Participant agrees to cooperate with any effort by O&R or its contractors and subcontractors, to make or to have made follow-up visits to the Site, and the Participant shall provide EV charger data, supporting documentation, and otherwise cooperate fully in support of this effort. The Participant on behalf of itself and any customer, as may be necessary, agrees that O&R may provide customer information including customer name, account number, and electric consumption data, to a third-party contractor or to the NYPSC, as needed, to perform verification work in connection with the Project.

The Participant acknowledges and agrees that O&R is required to provide reports of data and information to the PSC consistent with the requirements of the PSC Order, and that the Participant must support O&R fully in this regard. Consistent with the immediate foregoing, and as may be modified and supplemented by O&R and noticed to the Participant at any time based on requests, directives, and interpretations of PSC requirements, among other things, the Participant is responsible for reporting to O&R (including, to a third-party consultant on behalf of O&R) the data and information specified below as part of this Section XV on a quarterly basis for five years from the date of commencement of EV charger operation or other such time as determined by the NYPSC or determined reasonably by O&R and noticed to the Participant by O&R. Consistent with the NYPSC Order and the requirements of the Program, if the Participant fails to provide the data and information requested in connection with the Program, then the Participant may be then deemed to not be eligible for any new or unpaid incentives relating to the Program, and, among other things, the Participant may also be subject to claw back of incentives received previously and the revocation of related service related to the Program and the EV charger units may be subject to operation by alternate market providers.

Consistent with the NYPSC Order, the Participant acknowledges and agrees that O&R may provide to the NYPSC EV charger data (including, by and through a third-party consultant receiving the EV charger data from the Participant on behalf of O&R), and utility data (including, without limitation, programmatic maintenance and improvement categories, including: program participation information and plug and charging session data bifurcated by L2 and DCFC plugs), and O&R acknowledges and agrees that any customer information provided to the NYPSC will be anonymized and/or aggregated with other customer information.

The data and information (with a focus on EV charging data) to be provided by the Participant to O&R may be provided (on a quarterly basis, or more frequently as may be noticed by O&R to the Participant) by the Participant to a third-party consultant designated by O&R. The third-party consultant shall receive data and information (with a focus on EV charging data) from the Participant on behalf of O&R, and, as permissible, the third-party consultant shall anonymize and aggregate such data and information received directly from the Participant with data and information from other Program participants (including any participants under programs established pursuant to the NYPSC Order by the other utilities comprising the Joint Utilities) before further sharing, including with the Joint Utilities and the PSC.

The data and information to be reported by or on behalf of the Participant to satisfy the requirements of the Program shall include the data and information set forth below.

- Program participation, including:
  - Reporting year;
  - Site location and ID;
  - Census Tract;
  - Whether site is located in a Disadvantaged Community;
  - Percent of service applications that have matured into operating stations;



- Number of station owners participating;
- Number of sites for which incentives were issued;
- Number of plugs installed;
- Aggregated kW Nameplate Capacity;
- Infrastructure costs (broken out by customer and company infrastructure, allocated by make-ready costs and new business costs);
- Incentive levels received by a given site;
- Total incentives paid per site;
- Incentives received from other funding sources (including, without limitation, from the MHD Pilot, the Transit Authority Make-Ready Program, and Operating Cost Relief from a Demand Charge Alternative Program).
- Plug and charging session data (to be bifurcated by L2 and DCFC plugs), including:
  - The number of sessions daily;
  - Start and stop times of each charge;
  - The amount of time each vehicle is plugged in per session;
  - Peak kW per charging session (aggregated monthly, including site capacity, charger nameplate capacity, and peak kW load management adjustment);
  - kWh per charging session;
  - Annual aggregated kWh;
  - Annual aggregated percent utilization;
  - Annual aggregated hours charging; and
  - Plug outage information. Plug outage information is to include the number and duration of outages and is to be differentiated by expected outages (for maintenance) and unexpected outages.

In addition to the data and information to be reported by or on behalf of the Participant to satisfy the requirements of the Program, the Participant shall also report promptly to O&R and to the NYPSC any customer complaints in connection with the Program.

The data and information sharing requirement provided for by this Section XV shall survive the expiration or termination of the Program or this Agreement.

**XVI. DISPUTES**

O&R will have sole reasonable discretion to determine the final resolution of any and all issues pertaining to the Program, including, but not limited to, the eligibility and incentive amounts payable, if any.

**XVII. EVENTS OF DEFAULT**

The Participant may be considered in default of this Agreement by O&R if the Participant is unable to meet the Participant’s obligations provided for by this Agreement.

**XVIII. REPRESENTATIONS OF THE PARTICIPANT**

The Participant shall at all times conduct business consistent with the requirements of O&R and the Participant Guide, and in an ethical manner consistent with reasonable expectations of professional conduct, and the Participant shall not represent the Program in a manner that would violate the requirements of O&R and the

Participant Guide and that could adversely affect O&R's business, operations, reputation, and good standing with O&R's customers or the community. Without limitation, the Participant shall (1) comply with applicable laws, ordinances, regulations, codes and all requirements applicable to the Program, (2) maintain any and all relevant trade and other licenses as required by federal, state, county, or municipal government in connection with any activity by the Participant related to the Program, (3) represent truthfully, fully and accurately the technology and services proposed in connection with the Program and the Participant shall not make any misrepresentations in this regard, (4) ensure that all information provided to O&R with respect to the Project shall be truthful, accurate, and complete, including, without limitation, information provided as part of submitted applications and reports, information related to project costs and associated documentation (including, without limitation, invoice dates, equipment costs, make and model, quantities), and the Participant shall not make any misrepresentations in this regard, (5) make prompt request of O&R for any change in scope related to the Project and the Participant shall not implement any change in scope related to the Project without the prior approval of O&R.

A failure under this Section XVIII by the Participant shall be considered by O&R as evidence of a violation of this Agreement and may be considered an event of default under Section XVII.

#### **XVIX. FORCE MAJEURE**

The Participant shall be excused for any delay in completion of the obligations provided for by the Program Agreement arising from a cause beyond its control which the Participant could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of the Participant, strike which is not the result of an unfair labor practice or other unlawful activity by the Participant, war, terrorism, epidemic, cyber-attack, riot, and failure of public transportation facilities. Delays on account of the COVID-19 pandemic and any subsequent expressions, characterizations or iterations associated therewith shall not be excusable delay. Delay in the Participant's receipt of subcontracted supplies or services for reasons beyond the Participant's control shall not be excusable delay to the extent that the supplies or services are available to the Participant from another source. The unavailability of sufficient, qualified labor to perform under the Program Agreement shall not be excusable delay unless the unavailability is caused by a strike that is not the result of an unfair labor practice or other unlawful activity by the Participant. The Participant shall give written notice and full particulars of the cause of any delay within 48 hours after its occurrence and thereafter shall update the Company on a bi-weekly basis. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. Such extension shall be the Participant's sole and exclusive remedy for such delay and the Company shall not be liable for any damages or additional costs incurred as a result of such delay.

#### **XX. EXPIRATION, MODIFICATION OR TERMINATION OF THE PROJECT OR THE PROGRAM**

No new incentives will be issued under the Program when incentive funds allocated to the Program are depleted, when plug requirements under the Program are achieved or when the Program is terminated, whichever occurs first, or as otherwise determined by O&R. If there is a change of any detail with a potential known or unknown impact to the Project, whether or not pertaining to the Site ("Project Details"), then the Participant must notify O&R, and any change in Project Details determined by the Company to be material may lead to modification of the Program Agreement, or termination of the Program Agreement citing an Event of Default. If there is a change in Project Details notified to O&R that does not impact the site engineering analysis, or any change in Project Details that O&R decides in the Company's discretion is with no potential to impact materially the Project in a manner important to the Company's objectives, then the Company may choose to continue with the Project without modification to the Program Agreement, or to continue with the Project with modification to the Program Agreement sufficient to reflect the change in Project Details. If there is a termination of the Program Agreement due to a determination of O&R based on a change in Project Details, then the Participant may have the option to propose another application to the Program on the Program Website, and, if the application is

permitted to be made and is accepted, then the project will be the subject of a new agreement between the Participant and the Company.

The expiration or termination of the Program or the Program Agreement shall not avoid the reporting requirements of the Participant, including as more particularly provided for by Section XV of this Agreement.

**XXI. REMOVAL OF EQUIPMENT**

As a condition of participation in the Program (subject at all times to the Participant satisfying the obligations of the Program Agreement (including, without limitation, the requirements of Section XIII (five year term of operation of equipment), and Section VII (no decrease to charging capacity on upgrade or change of ownership to equipment)), at the sole cost and expense of the Participant, the Participant agrees to remove and dispose of any and all equipment or materials that are replaced or removed in connection with the performance of the Project, or that may be required by O&R (including at the request of a Customer or Site Host) at the termination of the Project or the termination or expiration of the Program, and the Participant represents and warrants that such removal and disposal shall be done in accordance with all applicable laws, rules, and regulations.

**XXII. USE OF O&R MARKS, MARKETING**

All uses of the O&R name and any other trademark and/or service mark (including, without limitation, any logo design) owned by O&R (the “**O&R Marks**”), including, without limitation, use of the O&R Marks on the Participant’s website and in promotional materials, must be approved by O&R through the then-current process required by O&R. Consistent with the immediate foregoing, O&R hereby grants to the Participant a non-exclusive, nontransferable, royalty-free license to use the O&R Marks in connection with any pre-approved marketing material solely for the purpose of marketing the Program consistent with the objectives of this Agreement. The Participant may use the O&R Marks only as may be pre-approved by O&R, and shall not be permitted to create and use any new or additional marketing materials containing any O&R Marks without O&R’s consent. The Participant shall acquire no right, title, or interest in the O&R Marks other than the limited license stated herein. The Participant’s use of the O&R Marks shall inure to the exclusive benefit of O&R, its successors and assigns.

The Participant may not make statements about this Agreement or the participation of the Participant in the Program without the express prior written permission of O&R in each case.

**XXIII. DISCLAIMER**

The Participant acknowledges and agrees that the Participant entering into this Agreement and participating in the Program are completely voluntary and that O&R shall not be liable to any other person or entity in connection with the Program, including in connection with O&R’s review or approval of the application to participate in the Program. O&R makes no representation or warranty, and undertakes no responsibility whatsoever concerning the adequacy of any project design or plan, any construction or installation work (including, without limitation, the work of an Approved Contractor), the completion of the Project or the performance of any electric vehicle charging infrastructure established. The Participant further acknowledges and agrees that neither the Company nor its affiliated entities nor their respective trustees, directors, officers, shareholders, employees, contractors, agents or representatives shall be liable to the Participant or to any other person or entity for any claim, charge, complaint, cause of action, damage, loss, agreement or liability of any kind or nature whatsoever, whether known or unknown and whether at law or in equity, arising out of, related to or in connection with the Program.

**XXIV. NO REPRESENTATIONS OR WARRANTIES**

**NEITHER THE COMPANY NOR ITS CONTRACTORS, REPRESENTATIVES OR AGENTS MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND (WHETHER ARISING BY IMPLICATION OR BY OPERATION OF LAW) WITH RESPECT TO THE PROGRAM, THE PROJECT, THE ADEQUACY OF ANY DESIGN OR PLAN RELATED TO THE PROJECT, OR ANY EQUIPMENT, CONSTRUCTION OR INSTALLATION OF EQUIPMENT, THE PERFORMANCE OF AN APPROVED CONTRACTOR, OR THE AMOUNT OF INCENTIVES TO BE PAID WITH RESPECT TO THE PROJECT, INCLUDING,**

**WITHOUT LIMITATION, ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER MATTER. THIS PROVISION SHALL SURVIVE THE EXPIRATION, TERMINATION OR CANCELLATION OF THIS AGREEMENT AND THE PROGRAM AND ANY PARTICIPATION THEREIN BY THE PARTICIPANT.**

**XXV. LIABILITY LIMITATION**

**IN NO EVENT IS EITHER PARTY (INCLUDING BY OR THROUGH ANY OF ITS CONTRACTORS, REPRESENTATIVES OR AGENTS) RESPONSIBLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING IN CONNECTION WITH THE PROGRAM OR PROJECT, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, REGARDLESS OF WHETHER THOSE DAMAGES WERE FORESEEABLE.**

**XXVI. RELEASE; INDEMNIFICATION**

To the fullest extent permitted by law, the Participant, on behalf of the Participant and any other person or entity engaged in claiming by and through the Participant (including, without limitation, as may be relevant, Customer, Developer, Equipment Owner, Site Host, or Approved Contractor), hereby irrevocably and unconditionally releases and forever discharges, and agrees to defend, indemnify, and hold harmless the Company, its affiliated entities, and their respective contractors, past, present and future officers, directors, trustees, shareholders, employees, agents, representatives, successors and assigns (collectively, the "Indemnified Parties"), from and against, any and all claims, charges, complaints, causes of action, damages, losses, costs, interest, and liabilities of any kind or nature whatsoever, including reasonable attorney's fees, court costs, costs of experts and costs of investigation, whether known or unknown and whether at law or in equity arising from, related to or in any way connected with the Participant's engagement or association with the Program (whether accepted or rejected). Among other things, O&R shall have no responsibility or liability for items, work or services provided, installed, or performed by the Participant, its employees, its agents, its subcontractors, the Approved Contractor, or any third parties in connection with the Program. The Company recommends that the Participant (and any other party, if different) engage qualified engineers or other qualified consultants to evaluate the risks and benefits of participation in the Program and the implementation, operation or use of any project or measure, cost savings, or the operation of the Site or the Project. The Participant understands that this Agreement may not continue to be approved if the Company determines at any time that the Project does not meet the requirements of the Program and that final payment of any incentive amounts is contingent on satisfaction of all terms and conditions of the Program.

**XXVII. GOVERNING LAW - JURISDICTION AND VENUE**

The validity, construction and performance of the terms and conditions of this Agreement shall be governed by and construed and enforced in accordance with the law of the State of New York, without regard to its conflicts of law provisions. The Participant irrevocably submits and agrees to the jurisdiction of the state and federal courts of the State of New York situated in New York County or Rockland County in any action, suit or proceeding related to, or arising out of this Agreement and, to the extent permitted by applicable law, the Participant waives and agrees not to assert as a defense in any such action, suit or proceeding any claim (a) that the Participant is not personally subject to the jurisdiction of such courts of the State of New York, (b) that the venue of the action, suit or proceeding is improper, (c) that the action, suit or proceeding is brought in an inconvenient forum, or (d) that the subject matter of these terms and conditions may not be enforced in or by such courts of the State of New York. Without prejudice to any other mode of service or process, the Participant consents to service of process relating to any such proceedings by personal or prepaid mailing in registered or certified form of a copy of the process to the Participant at its address set forth in this Agreement.

**XXVIII. SEPARATE COUNSEL**

Before entering into this Agreement and participating in the Program, the Participant is encouraged to retain legal counsel to review the terms and conditions of this Agreement and to advise the Participant regarding the Participant's rights and obligations hereunder and under the Program.

**XXIX. SEVERABILITY**

If any provision of this Agreement is held to be invalid, illegal, or unenforceable, then the validity, legality and enforceability of the remaining provisions are in no way affected or impaired. The remaining provisions remain in full force and effect and the invalid, illegal or unenforceable provision will be deemed stricken from the agreement. If necessary to effectuate the intent of the parties, then the parties will cooperate to reach a mutually acceptable provision that is valid, legal, and enforceable to replace the stricken provision.

### **XXX. NOTICES**

For coordination purposes, routine notices or other communication, including a change of address, a change of the person to be notified, transmittal of invoices, or other general correspondence relating to performance of this Agreement, may be provided by electronic mail or by electronic facility (such as the sales and project management platform in use by O&R). Formal legal notices to a party, including relating to rights being claimed or disputed under this Agreement, must be in writing and must be sent by hand or overnight mail service, or registered or certified United States mail, return receipt requested, to the attention of the parties at the respective addresses set forth below, or by electronic mail or other electronic facility with means sufficient to confirm receipt, including by acknowledgement, response, or other action or capability sufficient to demonstrate receipt:

to the Company:  
e-mail: ev@oru.com

with a copy to:  
One Blue Hill Plaza,  
Pearl River, NY 10965  
Attn: Director, Utility of the Future

and a copy to:  
Consolidated Edison Company of New York, Inc.  
4 Irving Place, 18<sup>th</sup> Floor New York, NY 10003  
Attn: Associate General Counsel, Commercial Transactions

to the Participant: {data: Participant\_Information Email}

with a copy to:

{data: Participant\_Information First} {data: Participant\_Information Last}

{data: Participant\_Information Company}

{data: Participant\_Information Line 1} {data: Participant\_Information Line 2}

{data: Participant\_Information City}, {data: Participant\_Information State} {data: Participant\_Information Zip Code}

Attn: {data: Add\_Notices\_Contact First} {data: Add\_Notices\_Contact Last}

{data: Add\_Notices\_Contact Email}

### **XXXI. HEADINGS**

The descriptive headings used in this Agreement are for purposes of convenience only and do not constitute a part of this Agreement.

### **XXXII. MODIFICATION; AMENDMENT OR SUPPLEMENT**

This Agreement, together with all documents and other materials delivered pursuant hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements or understandings, written or oral, with respect to such subject matter. Any modification, amendment or supplement to this Agreement shall not be valid or enforceable against either party unless it is in writing and signed on behalf of both parties by their respective duly authorized representatives.

### **XXXIII. NON-ASSIGNMENT**

This Agreement may not be assigned, delegated, subcontracted, or otherwise transferred by the Participant without the prior written approval of the Company in each case.

### **XXXIV. INDEPENDENT CONTRACTORS**

The parties acknowledge and agree that the Company and the Participant are independent contractors hereunder, and that nothing in this Agreement shall be construed so as to create any partnership, joint venture, or employee-employer relationship among or between the Company and the Participant, including, without limitation, any incentive payment arrangement hereunder. Neither party shall represent itself as having the authority or power to bind, or act on behalf of, the other party. Each party will be solely responsible for payment of all compensation owed to its employees and employment-related taxes, as well as maintenance of appropriate worker's compensation for its employees and general liability insurance. The Participant further acknowledges and agrees that O&R is not a party to any contract between or among the Participant and any third parties (whether, as may be applicable, Customer, or a Developer, or an Equipment Owner, or a Site Host, or an Approved Contractor), nor is O&R in a partnership, joint venture, or other relationship with the Participant to provide any benefit to any of such third parties, and the Participant shall indemnify, defend, and hold harmless O&R with respect to all claims relating thereto, and as more particularly set forth as part of Section XXVI hereof.

### **XXXV. GIFT POLICY AND UNLAWFUL CONDUCT**

The Participant is advised that it is a strict O&R policy that neither employees of O&R nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with O&R. Accordingly, the Participant, its employees, agents, and subcontractors are strictly prohibited from offering or giving any Gift to any employee of O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the services to be performed under this Agreement. Furthermore, the Participant is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between O&R and the Participant or any services or work performed for or on behalf of O&R, or in any other dealings relating to O&R. The Participant represents, warrants, and covenants that the Participant, its agents, employees, and subcontractors have not engaged and will not engage in any of the acts prohibited under this Section XXXV. Upon a breach of any these representations, warranties, or covenants and/or the commission of any act prohibited under this Article, the Participant shall be in default under this Agreement and all other contracts between O&R and the Participant and (a) O&R may, in its sole discretion, cancel for default this Agreement and any other contract between O&R and the Participant, (b) O&R may, in its sole discretion, remove the Participant from O&R's list of qualified bidders, (c) the Participant shall have forfeited all rights it has under this Agreement and any other contract between O&R and the Participant (including, but not limited to, the right to payments for services performed or goods furnished), and (d) O&R shall have no further obligations to the Participant relating to such contracts. In addition, the Participant shall be liable to O&R for all damages caused to, and costs incurred by, O&R as a result of any violation of this Section XXXV, including the costs and expenses of internal and external attorneys and investigations. Whenever O&R has a good faith reason to believe that the Participant may have violated this Section XXXV, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due the Participant under this Agreement or any other contract between O&R and the Participant during the pendency of such investigation. The remedies set forth in this Section XXXV are non-exclusive, and O&R expressly reserves all rights and remedies under such contracts, and in law and equity. For the purposes of this Section XXXV, the term "O&R" shall include all of O&R's affiliates, including, but not limited to, Consolidated Edison Company of New York, Inc. ("Con Edison"). The Participant shall promptly report any alleged violation of this Section XXXV to Con Edison's Vice President of Purchasing or to Con Edison's Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

### **XXXVI. ACCEPTANCE OF CONTRACT OFFER**

This Agreement is an offer by O&R to the Participant to enter into a contract, which offer must be accepted by or on behalf of the Participant, including by a valid acknowledgement electronically or by signature. If this

Agreement is not accepted by or on behalf the Participant within 60 days of the offer by O&R to the Participant, then O&R may withdraw the offer and with no further obligation to the Participant (or any third party) to enter into a contract with the Participant.

**XXXVII. CONTRACT FORMATION; AMENDMENTS**

A legally enforceable contract shall arise upon the signing or acknowledgement electronically by or on behalf of the Participant of this Agreement, or upon the mailing or delivery by other means of this Agreement, or by another writing manifesting acceptance of this Agreement; provided, however, if the Participant's intended acceptance contains terms additional to or different from those of this Agreement, then no revision or modification of or amendment to this Agreement shall be valid or binding unless specifically acknowledged in writing (electronically or in print form) and signed (electronically or in print form) by an authorized representative of O&R..

**XXXVIII. COUNTERPARTS**

This Agreement may be executed in two (2) or more counterparts, each of which, taken together, shall be deemed to be an original, but all of which shall constitute one and the same Agreement. If any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, or by other electronic facility, then such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” or electronic facility signature page is an original thereof.