



## Terms and Conditions (T&Cs)

On June 20, 2024, Efficiency Maine issued a Request for Proposals, RFP-033-2024, (the “RFP”) seeking applications for installation and operation of Level 2 EV charging equipment at regional service centers. In response to the RFP, the Recipient has submitted an application (the “Application”) for funding of a certain project to install Level 2 EV chargers (the “Project”) at one or more regional service centers.

Acceptance of these Terms and Conditions (T&Cs) is a condition of participation in this RFP. Recipient shall sign these T&Cs and return the signed document to Efficiency Maine. These T&Cs are deemed to be part of and incorporated into the Agreement between Efficiency Maine and the Recipient for participation in the RFP and payment of any Incentive Award.

Upon receipt of signed T&Cs, Efficiency Maine will review the Recipient’s application for eligibility and completeness. If the application satisfies the RFP criteria and sufficient funds remain available, Efficiency Maine will issue a pre-approval by email in the form of an Incentive Offer Letter (the “Incentive Award”) describing the amount of the incentive that has been pre-approved. Recipient must reply to the pre-approval email indicating acceptance of the offer.

### **1. Incentive Award; Disbursements**

- 1.1 Subject to pre-approval and acceptance of the Incentive Award offer, Efficiency Maine will provide Recipient an Incentive Award to be used solely for eligible costs as described in the RFP for Level 2 EV charging station equipment consistent with the requirements of the RFP and Recipient’s Proposal. Efficiency Maine reserves the right to adjust the Incentive Award as necessary to maintain compliance with any limitations as set forth in the RFP.
- 1.2 Applications for incentives under the RFP must be pre-approved by Efficiency Maine and Efficiency Maine reserves sole discretion to accept or reject any application. Efficiency Maine makes no commitment to provide an incentive prior to sending the Incentive Award offer, and Recipient should not take any action with the expectation of receiving an Incentive Award until Recipient has submitted its acceptance of an Incentive Award offer to Efficiency Maine.
- 1.3 Efficiency Maine expects to disburse Incentive Award amounts within thirty (30) days of Project completion and a review of the Recipient’s invoices and other documentation that verify Project completion according to the terms of the award. If Efficiency Maine determines that the Level 2 EV charging equipment was not installed in a manner consistent with the Application or RFP, if ineligible equipment was installed, or if the installation is not consistent with applicable codes, Efficiency Maine may require changes before making payment. Efficiency Maine reserves the right to seek a complete refund, and Recipient shall be obligated to provide complete reimbursement to Efficiency Maine, for all Incentive Award amounts paid if, at any time, Efficiency Maine learns that, during the term described in Section 2.6, the approved equipment was not installed, was disconnected, was removed or relocated, was installed at a location that was not pre-approved by Efficiency Maine in writing, or is not available to the public at least as frequently as the business operating hours of the site host, unless such requirement was expressly waived by Efficiency Maine in writing. In no event during the useful life of the Level 2 EV charging equipment shall it be moved outside of the State of Maine.
- 1.4 Recipient must provide copies of all invoices and other documentation that verify the costs of purchasing and installing the approved Level 2 EV charging equipment, including all materials, labor, and equipment discounts. Invoices must indicate a verifiable breakout of all equipment purchased for installation under this Agreement. Efficiency Maine has the right at any time to require invoices from the contractor to determine the price paid by the contractor to its supplier (including any discounts or incentives) for the equipment subsidized by the Incentive

Award.

- 1.5 It is a condition of disbursement of the Incentive Award that the Level 2 EV charging equipment, and any associated electrical components, be approved by the Underwriter's Laboratory (UL).
- 1.6 Efficiency Maine will not reimburse Recipient for any cost or expense that is an ineligible cost as set forth in the RFP, is contrary to the T&Cs or is contrary to applicable law. Any expenditure by Recipient or commitment by Recipient to expend funds for the Project prior to the effectiveness of these T&Cs is at Recipient's risk. Reimbursement of Project funds expended or committed by Recipient prior to the acceptance of the Incentive Award is at Efficiency Maine's sole discretion.
- 1.7 By submitting any invoice or request for reimbursement, Recipient is representing that the services or costs identified in the invoice or request for reimbursement have been provided or incurred and that such costs and expenses are proper and allowable under the RFP and these T&Cs. By paying all or a portion of any invoice or request for reimbursement, Efficiency Maine does not waive its right to recover any payment or reimbursement later determined to be improper or not allowable under the RFP and these T&Cs.
- 1.8 Recipient must install the Project within the time period specified in the RFP. If Recipient fails to advise Efficiency Maine that the Project is complete or fails to provide required post-installation documentation within 30 days of Project installation, payment of the Incentive Award may be delayed or denied.
- 1.9 Efficiency Maine reserves the right to make follow-up visits to Recipient's equipment installation location or facility to ensure ongoing compliance with this Agreement.

## **2. Standards of Performance**

- 2.1 Recipient shall be solely responsible to (i) secure all necessary rights and licenses to install and operate the Level 2 EV charging equipment at the approved host site location; (ii) acquire all equipment and materials necessary for complete performance of the Project; and (iii) furnish or arrange for qualified licensed contractors, suppliers, service providers and other personnel as necessary for the complete performance of the Project. Recipient shall, and shall cause its contractors to, perform all work and services in connection with the Project in a timely, professional, and workmanlike manner.
- 2.2 Recipient shall, and shall ensure that its contractors, abide by and conform to applicable state, federal, and local laws, ordinances, rules, codes, regulations, and standards in the performance of the Project, **including but not limited to those set forth in Rider A, which is attached hereto and incorporated herein by reference.** Recipient is solely responsible for obtaining all permits, approvals, registrations, and licenses as may be required for installation and operation of the Level 2 EV charging equipment.
- 2.3 Recipient is solely responsible for all costs, expenses, fees, taxes, and other assessments arising from or relating to the installation and operation of the Level 2 EV charging equipment, including energy charges.
- 2.4 Recipient shall keep Efficiency Maine apprised of all material developments in connection with the Project. Efficiency Maine reserves the right to monitor Recipient's performance of this Project in order to verify compliance.
- 2.5 All equipment shall be new and unused (not refurbished). All equipment and associated electrical interconnections must be installed in a manner consistent with manufacturer recommendations and applicable code requirements.
- 2.6 Recipient, or its successor in interest to the property, shall maintain and keep the Level 2 EV charging equipment in operation at the approved location for a minimum of five (5) years from the date of commissioning of the equipment.
- 2.7 Recipient shall operate and use the Level 2 EV charging equipment funded in whole or in part with the Incentive Award only for the purposes intended by the RFP and these T&Cs.

- 2.8 Recipient shall ensure that the Level 2 EV charging equipment is available to the public, with appropriate signage, and that installation of the Level 2 EV charging equipment is compliant with applicable ADA accessibility standards.
- 2.9 Recipient shall keep the Level 2 EV charging equipment in good repair and reasonably protected from damage and vandalism.
- 2.10 Efficiency Maine does not make any representations of any kind regarding the results to be achieved by the Project. Efficiency Maine does not endorse, guarantee, or warrant any particular vendor, contractor, manufacturer or product, and it provides no warranties, express or implied, for any product or services. Neither Efficiency Maine nor its consultants are responsible for assuring that the design, engineering, or construction of the Project or installation of the Level 2 EV charging equipment is proper or complies with any particular laws, codes, or industry standards. Recipient is solely responsible for the design and implementation of the Project.

**3. Recipient Representations and Responsibilities**

- 3.1 Recipient acknowledges that the Incentive Award is provided for the purposes specified in the RFP and must be used in compliance with the RFP requirements and all applicable regulations.
- 3.2 All requirements, restrictions and obligations regarding the use of Incentive Awards are deemed incorporated in this Agreement and Recipient agrees to comply with all such requirements, restrictions and obligations. Recipient represents and warrants that no portion of the Incentive Award will be used for any purpose not expressly approved in the Incentive Award.
- 3.3 Recipient represents that it is eligible to receive the Incentive Award and that it is not suspended, debarred or disqualified from receiving state contracts, incentives, awards or other appropriations.
- 3.4 Recipient represents that neither the Proposal, nor any document, report, or certification given by Recipient in connection with this Agreement or the Project contains any untrue statement of material fact or any knowing omission of material fact. Recipient shall notify Efficiency Maine of any material change in Recipient's status or condition that could have a material adverse effect on Recipient's ability to complete and implement the Project as described in Recipient's Proposal and this Agreement.
- 3.5 Recipient represents and warrants that the equipment and measures funded in whole or in part through the Incentive Award shall not be resold, transferred, or moved from the Project location during the term described in Section 2.6.
- 3.6 Recipient acknowledges that a breach of any representation contained herein or the provision of any false or misleading information or knowing omission of material information in connection with the Project, whether by Recipient or its agents, may result in termination and revocation of the Incentive Award, require the immediate reimbursement of any Incentive Award amounts previously disbursed, and may result in Recipient's suspension or debarment from participation in Trust programs.

**4. Indemnity; Damages Limitation**

- 4.1 Efficiency Maine's sole obligation and total liability under this Agreement will be limited to paying the incentive amounts for approved projects completed in accordance with the RFP requirements and these T&Cs. In no event shall Efficiency Maine or any of its trustees, employees or agents be liable to the Recipient or anyone claiming through the Recipient for any special, consequential, or incidental damages, including lost profits or lost business opportunities, or for any damages in tort (including negligence) caused by or resulting from any activities in connection with or associated with the RFP or the installation, operation or use of the equipment or measures for which the incentives are awarded.

- 4.2 The Recipient shall protect, indemnify, and hold harmless Efficiency Maine and its trustees, employees, and agents from and against all third-party claims, liabilities, losses, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorney's fees and expenses) asserted against or incurred by Efficiency Maine arising out of or relating to the Recipient's participation in the Program, the work or services in connection with the Recipient's project, or the installation, operation or use of the equipment or measures for which incentives are awarded.
- 4.3 Nothing herein shall be construed to waive, release, or diminish any statutory or common law immunities of Efficiency Maine as a governmental entity, all of which are expressly retained.

**4A. Breach and Remedies.**

- 4A.1. The failure of Recipient to perform any of its obligations in accordance with this Agreement, in whole or in part, or in a timely or satisfactory manner shall be a breach.
- 4A.2. In the event of a breach, the Trust shall give written notice of breach to the Recipient. If the Recipient does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Trust may exercise any of the remedies as described in this Section 4A. Notwithstanding any provision of this Agreement to the contrary, the Trust, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement, in whole or in part, or institute any other remedy in this Agreement in order to protect the public interest of the State.
- 4A.3. If Recipient is in breach under any provision of the Agreement and fails to cure such breach, the Trust, following the notice and cure period set forth in this Section 4A, shall have all of the rights and remedies set forth in this Section 4A in addition to all other rights and remedies set forth in this Agreement or at law.
- i. Termination for Breach: In the event of Recipient's uncured material breach, the Trust may terminate this Agreement or any part of this Agreement.
    - a. Obligations and Rights: To the extent specified in any termination notice, Recipient shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Recipient shall complete and deliver to the Trust all work and services not cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. At the request of the Trust, Recipient shall assign to the Trust all of Recipient's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Recipient shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Recipient but in which the Trust has an interest. At the Trust's request, Recipient shall return materials owned by the Trust in Recipient's possession at the time of any termination. Recipient shall deliver all completed work and deliverables and all work product and deliverables in process of completion to the Trust at the Trust's request.
    - b. Payments: Notwithstanding anything to the contrary, the Trust shall only pay Recipient for accepted work and services received as of the date of termination
    - c. Damages and Withholding: Notwithstanding any other remedial action by the Trust, Recipient shall remain liable to the Trust for any awarded damages sustained by the Trust in connection with any breach by Recipient, and the Trust may withhold payment to Recipient for the purpose of mitigating the Trust's damages until such time as the exact amount of awarded damages due to the Trust from Recipient is determined. The Trust may withhold any amount that may be due Recipient as reasonably necessary to protect the Trust against loss.
  - ii. Remedies Not Involving Termination: The Trust, in its discretion, may exercise one or more of the following additional remedies, including during the pendency of any cure period:

- a. Suspend Performance: Suspend Recipient's performance with respect to all or any portion of the work and services pending corrective action as specified by the Trust. Recipient shall promptly cease performing all work and services and incurring costs in accordance with the Trust's directive, and the Trust shall not be liable for costs incurred by Recipient after the suspension of performance.
- b. Withhold Payment: Withhold payment to Recipient until Recipient corrects its work and services.
- c. Deny Payment: Deny payment for work or services not performed or not authorized under this Agreement.
- d. Removal: Demand immediate removal of any of Recipient's employees, agents, or contractors from the Project whom the Trust deems unacceptable or whose continued relation to this Agreement is deemed by the Trust to be contrary to the public interest.

4A.4. The Trust reserves all rights and remedies available at law or in equity in the event of a breach of this Agreement by Recipient. Without limiting the foregoing, in the event that this Agreement is terminated as a result of the Recipient's breach or default, the Recipient shall pay on demand all of the Trust's costs, fees (including attorney and paralegal fees and disbursements, including such fees or disbursements arising in any bankruptcy case or proceeding), expenses, and damages of any kind incurred by or imposed on the Trust in connection with or as a consequence of Recipient's breach of this Agreement. The various rights, remedies, options, and elections of the Trust in this Agreement are cumulative and not exclusive of any other right, remedy, or power allowed or available at law or in equity.

## **5. Miscellaneous Provisions**

- 5.1 Data and Information in Support of the Program. Recipient authorizes access by Efficiency Maine to usage, utilization, energy, and performance information relating to the equipment funded in whole or in part by the Incentive Award where such information is available. Efficiency Maine may be required to report on the use and performance of the Level 2 EV charging equipment. Information from these reports may be made available to the public. Recipient agrees to cooperate with Efficiency Maine on such reporting and shall provide information related to the Incentive Award, this Agreement, and the Project as requested or required by Efficiency Maine to meet its obligation to provide accurate, complete, and timely information to the public, to meet the Program reporting requirements, and/or to comply with state or federal law or regulation. Recipient agrees to allow independent, third-party verification of Project performance and energy utilization as may be requested by Efficiency Maine.
- 5.2 Site Visits. Efficiency Maine and its representatives have the right to make site visits at reasonable times to review Project progress, performance, and operation.
- 5.3 Independent Capacity. Recipient is an independent party and is not an agent or representative of Efficiency Maine. Recipient shall be solely responsible for the performance of the Project and the conduct of its employees, agents and contractors. In no event shall Efficiency Maine be deemed an employer, partner, or agent of Recipient or any of Recipient's personnel. Recipient shall select its own vendor or contractor to provide the equipment and perform the work contemplated by this Project, provided they are licensed and authorized to do business as may be required under any applicable law. In no event shall Efficiency Maine be responsible or liable for any act or omission of Recipient, its employees, agents, contractors, or vendors. Efficiency Maine reserves the right to prohibit specific vendors or contractors from participation in projects funded through this RFP.
- 5.4 Records. Recipient shall make and retain all project records (including financial records, progress reports, service, equipment, and material orders, invoices, evidence of payment, and payment and reimbursement requests) for a minimum of five (5) years following the expiration or termination of this Agreement. Recipient shall permit Efficiency Maine or its authorized representatives to examine such records and to interview any officer or

employee of Recipient or any of its contractors regarding the work performed under this Agreement. Recipient shall furnish copies of all such records upon request.

- 5.5 Taxes. Recipient shall be solely responsible for the determination and payment when due of all taxes that may be due in connection with the Incentive Award and the Project, including, without limitation, income, property, excise and use taxes. Incentive Awards received by Recipient may be taxable. Recipient must provide its tax identification number for payment processing. Incentive Award payments in excess of \$600 made to unincorporated entities will be reported by Efficiency Maine on IRS Form 1099-MISC.
- 5.6 Governing Law; Entire Agreement. The Agreement between Recipient and Efficiency Maine shall be governed in all respects by the laws, statutes, and regulations of the State of Maine. Any legal proceeding instituted by Efficiency Maine or Recipient regarding this Project shall be brought in State of Maine administrative or judicial forums. The T&Cs, taken together with the Application, the terms of the RFP, the Incentive Award and Recipient's acceptance of the Incentive Offer constitutes the entire Agreement of the parties and supersedes any prior discussions, understandings, and agreements, whether oral or in writing. The Agreement may be amended only in writing signed by the parties. This Agreement, and the rights and obligations hereunder, shall inure to the benefit of the Parties and their permitted assigns. No waiver shall be deemed to have been made by any of the Parties unless expressed in writing and signed by the waiving party.

By acknowledging these Terms and Conditions, you are representing that you have authority to bind the Recipient to these terms, and are doing so on behalf of the Recipient.

Signature: \_\_\_\_\_

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

Name & Title of Person Signing: \_\_\_\_\_  
(Please print)