

EFFICIENCY MAINE TRUST

**MAINE ELECTRIC VEHICLE CHARGING
INCENTIVE AGREEMENT**

THIS AGREEMENT, effective as of _____ (the “Effective Date”), is made by and between Efficiency Maine Trust, an independent quasi-state agency of the State of Maine (“Trust”) and _____, a corporation organized under the laws of the State of _____, federal tax identification number _____, with a place of business located at _____ (“Recipient”). The Trust and the Recipient are each a “Party” and collectively, the “Parties.”

[N.B. THIS SAMPLE INCENTIVE AGREEMENT IS DRAFTED FROM THE PERSPECTIVE OF A VENDOR OF EV CHARGERS/CHARGING SERVICES BEING THE “RECIPIENT.” IN THE EVENT THE RECIPIENT SHOULD BE THE PROPERTY OWNER OR THIRD-PARTY TENANT OF THE HOST SITE, THE PROVISIONS OF THIS AGREEMENT AND THE RIDERS WILL BE ADJUSTED ACCORDINGLY.]

WHEREAS, the Trust is the administrator of certain funds allotted from the Volkswagen Environmental Mitigation Trust (the “VW Settlement Funds”) to develop electric vehicle (EV) charging infrastructure pursuant to the Zero Emission Vehicle Supply Equipment provisions of the Maine Beneficiary Mitigation Plan (the “Program”) and pursuant to the Memorandum of Agreement, effective January 1, 2018 (Contract: 2018-EMT-MDOT-MOA) between the Maine Department of Transportation (as the designated Maine Beneficiary) and the Trust to administer Maine’s Electric Vehicle Supply Equipment Initiative;

WHEREAS, the Trust issued a Request for Proposals for Maine Electric Vehicle Charging – Phase 3 (RFP EM 010-2021) (the “RFP”) seeking proposals for the turn-key development and operation of EV fast-charging stations along select routes of Maine’s transportation corridors in accordance with the Program;

WHEREAS, in response to the RFP, Recipient submitted a proposal dated _____, 2021, (“Recipient’s Response to RFP”) proposing to secure suitable Host Sites, procure and install all required EV charging equipment, arrange for necessary utility and service connections, operate and maintain the equipment and charging stations, and provide customer support and reporting for a period of years as called for in the RFP (the “Project”);

WHEREAS, the Trust, based on the representations contained in Recipient’s Response to RFP and Recipient’s covenants and commitments contained in this Agreement, has decided to make an award to Recipient under the Program for implementation of the Project (the “Incentive Award”) and;

WHEREAS, in consideration of the Incentive Award, and subject to the terms of this Agreement, Recipient has agreed to perform the Project as described in the Statement of Work, Specifications and Project Description (the “SOW”) attached as Rider A to this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the Parties agree as follows.

1. PROJECT PERFORMANCE.

1.1 Recipient agrees to undertake, perform, provide and complete all work and services and provide all labor, equipment, materials, and deliverables as set forth in the SOW appended hereto as **Rider A** and as contained in Recipient’s Response to RFP to the extent not in conflict with the SOW (the “Project Services”). Any terms and conditions that may appear in acknowledgements, invoices, or other documents of Recipient have no force or effect with respect to this Agreement and will not serve to alter, amend, or

modify this Agreement or the SOW unless the Parties have expressly agreed to such new or additional terms in writing.

2. **TERM.**

2.1 This Agreement shall commence on the Effective Date and shall continue for a period of five (5) years from the date the last EV Charging Unit (as defined herein) at a Host Site (as defined herein) is commissioned and placed into service, after which period this Agreement shall expire (the "Term"), unless earlier terminated in accordance with the provisions of this Agreement or unless renewed or extended by mutual agreement of the Parties in a written document signed by each Party.

3. **INCENTIVE AWARD AND FUNDING DISBURSEMENTS.**

3.1 In consideration of Recipient's full performance of all Project Services over the Term in compliance with this Agreement, the Trust agrees to provide Recipient an Incentive Award not to exceed \$_____.

3.2 The Incentive Award shall be disbursed to Recipient by the Trust in accordance with the Payment Schedule set forth in **Rider B**. The Trust's obligation to make payments or disbursements to Recipient is conditioned on Recipient's compliance with all material terms and conditions of this Agreement, the submission of properly documented invoices and reimbursement requests, the provision of required information and reports, and the implementation and performance of the Project in accordance with the SOW.

3.3 Recipient shall expend Incentive Award funds only for approved Project purposes and only in accordance with the terms and conditions of this Agreement. The Trust will not reimburse Recipient for any cost or expense that is contrary to this Agreement or applicable law.

3.4 By submitting an 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, are within the approved Project scope, and that such costs and expenses are proper and allowable under this Agreement. By paying all or a portion of any invoice or request for reimbursement, the Trust does not waive its right to recover any payment or reimbursement later determined to be improper or not allowable under this Agreement.

4. **STANDARDS OF PERFORMANCE.**

4.1 Recipient shall, and shall cause its agents and contractors to, perform all work and services in connection with the Project in a timely, professional, and workmanlike manner. Time is of the essence in the performance of the Project.

4.2 Recipient shall be responsible to ensure that the Project achieves the requirements set forth in the RFP and SOW.

4.3 Recipient shall be responsible to furnish or arrange for all qualified personnel, facilities, equipment, materials and services as necessary for the performance of the Project and shall provide and maintain competent and adequate supervision of the Project to ensure that all Project Services conform to the SOW.

4.4 Recipient shall, and shall ensure that its contractors, abide by and conform to all applicable local, state, and federal laws, regulations, ordinances, and standards in the performance of the Project. Without limiting any other duty or obligation of Recipient, Recipient shall ensure that all Project installations and Charging Sites and Charging Units comply with local, state, and federal accessibility guidelines.

4.5 The Recipient shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to (i) personnel performing services on the Project and other persons who may be affected thereby; (ii) the materials and equipment to be incorporated in the Project,

whether in storage on or off the site or under the care, custody or control of the Recipient or its contractors; (iii) and persons and property at the Host Site(s) or adjacent thereto in connection with the installation or operation of any EV Charging equipment during the Term. The Recipient shall give all reasonable and necessary notices bearing on safety of persons or property and, where necessary, shall erect and maintain reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards.

4.6 The Recipient shall promptly remedy damage and loss to persons and property caused in whole or in part by the Recipient or its agents or contractors.

4.7 Recipient shall keep the Trust apprised of all material developments in connection with the Project and shall consult and coordinate with the Trust, through its Agreement Administrator, as necessary in the performance of the Project. The Trust reserves the right to monitor Recipient's performance of this Agreement in order to verify compliance.

4.8 Recipient shall abide by, and enforce as necessary, the terms of any lease, use, or occupancy agreement at a Project Host Site so as to ensure uninterrupted performance under this Agreement during the entire Term.

4.9 Recipient is solely responsible for the design and implementation of the Project. Neither the Trust nor its consultants are responsible for the design, engineering, or construction of the Project.

4.10 The Recipient warrants that materials and equipment furnished under the Agreement for performance and operation of the Project will be of good quality and new unless otherwise required or permitted by the Agreement, that the work and services will be free from defects, and that the work and services will conform to the requirements of the Agreement. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and must be repaired or replaced at the Recipient's expense.

5. RECIPIENT ACKNOWLEDGEMENTS AND REPRESENTATIONS.

5.1 Recipient acknowledges that funding of the Incentive Award is provided for specified improvements and operations in accordance with the Program. Incentive Award funds must be used in accordance with Program requirements. Recipient and its agents and contractors may be subject to audit in connection with the receipt and use of Incentive Award funds. Recipient agrees that, if it or one of its contractors fails to comply with applicable requirements governing use of the Incentive Award funds, the Trust may withhold or suspend, in whole or in part, the disbursement of Incentive Award funds and recover all misspent funds following an audit.

5.2 Recipient represents that it is authorized to conduct business in the State of Maine and that it shall maintain its good standing throughout the Term of this Agreement. Recipient represents that it has all requisite power and authority to execute this Agreement and perform the Project and that the execution and delivery of this Agreement and the performance of the Project have been duly authorized by all necessary action of its directors, trustees, partners, members, or managers as appropriate.

5.3 Recipient represents that it is financially solvent, able to pay its debts as they become due, and possesses sufficient working capital to complete the Project and perform its obligations under this Agreement. Recipient shall provide audited financial statements and such other financial information as the Trust may reasonably request to ensure Recipient's ongoing financial solvency, viability, and ability to complete and implement the Project.

5.4 Recipient represents that it is eligible to receive the Incentive Award and that it is not suspended, debarred or disqualified from receiving contracts, grants, awards or other appropriations in Maine or in any other state.

5.5 Recipient represents that it has filed all federal and state tax returns and reports as required by law and has paid all taxes, assessments and governmental charges due, except those contested in good faith in a proceeding with the assessing authority.

5.6 Recipient has disclosed any relationship, direct or indirect, between Recipient, its officers, directors, trustees, partners, members, managers, or employees, and the Trust or State of Maine that could reasonably give rise to a conflict of interest.

5.7 Recipient represents that there has been no material adverse change in the business, operations, or financial condition of Recipient since the submission of the Recipient's RFP Response. Recipient shall notify the Trust of any material change in Recipient's legal status, financial status, corporate status, or any other change in status of the Project that could have a material adverse effect on Recipient's ability to complete and implement the Project for the Term.

5.8 Recipient shall provide such documents and information and execute any additional documents, disclosures, certifications and statements of compliance as may be required under state or federal law or regulation, or as may be reasonably requested by the Trust in order to ensure compliance with applicable law or this Agreement.

5.9 Recipient acknowledges that equipment and measures funded in whole or in part through the Incentive Award are intended only for installation and use at the designated Host Sites within the State of Maine and shall not be moved from a Host Site without the prior written approval of the Trust.

5.10 Recipient acknowledges that a breach of any representation contained in this Agreement, 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 this Agreement and 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.

5.11 Recipient's representations constitute continuing representations throughout the Term.

6. **BREACH**

6.1 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. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Recipient, or the appointment of a receiver or similar officer for Recipient or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach.

6.2 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 Section 7 of this Agreement. 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.

7. **REMEDIES**

7.1 If Recipient is in breach under any provision of this Agreement and fails to cure such breach, the Trust, following the notice and cure period set forth in Section 6, shall have all of the rights and remedies set forth in this Section 7 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. Recipient shall continue performance of this Agreement to the extent not terminated, if any.
 - 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 including, without limitation, loss as a result of outstanding liens and excess costs incurred by the Trust in procuring from third parties replacement work and services as cover.
 - d. Enforcement of Security Interest: In the event of uncured breach by Recipient, the Trust shall be entitled to exercise any rights or remedies under any Security Agreement or Collateral Assignment it may have to secure Recipient's performance of this Agreement.
- 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.
 - e. Nothing herein is intended to limit the Trust's right to assess and recover Service Credits as provided in Rider B.

7.2 The Trust reserves all rights and remedies available at law or in equity in the event of a breach of this Agreement by Recipient including, without limitation, the right to demand reimbursement of all Incentive Award funds disbursed under this Agreement, and upon such demand Recipient shall immediately so reimburse the Trust. 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, including costs of collection and recovery of the Incentive Award funds and those costs incurred or paid by the Trust to protect, preserve, collect, lease, sell, repair, improve, advertise, locate, take possession of, liquidate, or otherwise deal with any collateral securing Recipient's obligations under 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.

7.3 In order to secure Recipient's obligations under this Agreement and the Option Agreement required in Section 7.4, below, Recipient is required to execute and deliver to the Trust a Security Agreement in the form set forth in **Rider D** hereof and Recipient shall execute, and cause each Host Site landlord or owner to execute, a Conditional Assignment of Lease in the form attached as **Rider E**, to allow the Trust to assume Recipient's rights under the Host Site lease or occupancy agreement in the event of Recipient's default under this Agreement or such other condition as set forth in the Conditional Assignment of Lease.

7.4 Recipient shall execute an Option Agreement in the form attached hereto as **Rider F** granting the Trust the right to acquire the EV Charging Site equipment located at a Host Site for a specified period following termination or expiration of this Agreement in the event that Recipient discontinues operation of the EV Charging Site at such Host Site.

8. **MISCELLANEOUS PROVISIONS.**

8.1 This Agreement shall be governed in all respects by the laws, statutes, and regulations of the State of Maine. Any legal proceeding instituted by the Trust or Recipient regarding this Agreement shall be brought in the State of Maine and Recipient hereby agrees to the exclusive jurisdiction of the state and federal courts located in the State of Maine for the resolution of disputes relating to this Agreement.

8.2 All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the other terms of this Agreement to the extent possible. The invalidity or unenforceability of any particular provision or part of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

8.3 This Agreement, along with the Riders and other provisions expressly incorporated herein, contains the entire Agreement of the Parties, and neither party shall be bound by any statement or representation not contained herein or therein or in a written amendment or change order signed by the Trust. 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. The Parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the Parties which is not expressed in writing. The failure of any Party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any Party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.

8.4 The following Riders are attached to and made part of this Agreement:

Rider A – Statement of Work, Specifications and Project Description

- Rider B – Payment Schedule
- Rider C – General Terms and Conditions
- Rider D – Security Agreement
- Rider E – Conditional Assignment
- Rider F – Option Agreement

Recipient's Response to RFP is expressly incorporated into and made part of this Agreement.

In the event of a conflict between or among the provisions of the Agreement documents, the conflict shall be resolved by giving precedence to the documents in the order listed below, with 1 having the highest precedence and 9 the lowest.

1. Efficiency Maine Trust Maine Electric Vehicle Charging Incentive Agreement;
2. Rider A – Statement of Work;
3. Rider C – General Terms and Conditions
4. Rider B – Payment Schedule;
5. Efficiency Maine Trust Request for Proposals for Maine Electric Vehicle Charging – Phase 3 (RFP EM 010-2021);
6. Rider D – Security Agreement
7. Rider E – Conditional Assignment
8. Rider F – Option Agreement; and
9. Recipient's Response to RFP, dated _____, 2021.

8.5 All notices, progress reports, correspondence and related submissions from the Recipient shall be submitted to:

Name: Anastasia Hediger (ATTN: EVC Phase 3)
 Title: Program Manager
 Efficiency Maine Trust
 Address: 168 Capitol Street, Suite 1
 Augusta, Maine 04330-6856
 Telephone: (207) 213-4162
 E-mail: Anastasia.Hediger@efficiencymaine.com

This individual is designated as the Agreement Administrator on behalf of the Trust for this Agreement, except where specified otherwise in this Agreement or as replaced by the Executive Director of the Trust. The Agreement Administrator shall be the Trust's representative during the Term. He/she has authority to curtail services if necessary to ensure proper execution and compliance. He/she shall certify to the Trust when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Recipient, subject to the approval of the Executive Director of the Trust.

8.6 Recipient address for notices under this Agreement:

Name: _____
 Title: _____
 Organization _____
 Address: _____

 Telephone: _____
 E-mail: _____

8.7 All notices under the Agreement shall be deemed to have been duly given and delivered: (i) upon delivery, if delivered by hand, (ii) three (3) business days following posting, if sent by registered or

certified mail, return receipt requested, or (iii) one (1) business day after dispatch if sent overnight or next day delivery by national courier service, such as FedEx or UPS, with tracking receipt.

This Agreement shall not be binding on the Trust until executed and delivered by the Executive Director of the Trust.

{Signature Page Follows}

IN WITNESS WHEREOF, the Trust and Recipient have executed this Agreement through their authorized representatives.

EFFICIENCY MAINE TRUST

By:

Michael D. Stoddard, Executive Director

Date: _____

XXXXXXXX

By:

XXXXXX, XXXXXXXXXXXX

Date: _____

RIDER A

STATEMENT OF WORK, SPECIFICATIONS AND PROJECT DESCRIPTION

The Recipient shall fully execute all work and services described in this SOW and Recipient’s Response to RFP (to the extent not in conflict with this SOW), it being the intent of the Parties that this SOW is intended to include everything necessary for the proper execution and performance of the Project over the Term. The Project Services include all work and services contained in this SOW and Recipient’s Response to RFP (to the extent not in conflict with this SOW) or reasonably inferable therefrom as necessary to produce the results intended by the RFP.

Definitions:

- **Downtime:** Refers to a period of time when a Charger is not able to charge a car at 50% or more of the Charger’s stated kilowatt dispense rate or 50% of what the vehicle is requesting, whichever is less.
- **Uptime:** Refers to a period of time when a Charger is able to charge a car at 50% or more of the Charger’s stated kilowatt dispense rate or 50% or more of what the vehicle is requesting, whichever is less.

The Project requires the complete installation of Charging Sites and Charging Units, including DCFCs, no later than the dates noted in the Deployment Table (below) at the Host Site locations specified below, unless otherwise agreed to by the Trust in writing. The Recipient is fully responsible to provide or select appropriate Host Site(s) and, as necessary, to enter into enforceable written lease or occupancy agreements giving Recipient all necessary right and authority to install, operate, and maintain the Charging Sites at the Host Sites during the entire Term of this Agreement. The Recipient is required to provide or cause to be provided and shall pay for all design services, labor, materials, equipment, tools, machinery, utilities, transportation, facilities, services, hardware, software, chargers, infrastructure, communications and network operations, and other materials and things necessary for proper installation, operation, maintenance, and support of the Charging Sites and full and proper execution and completion of the Project throughout the entire five-year Term. The Recipient is fully responsible to operate and maintain the Charging Sites at the Host Site locations for the entire five-year Term of this Agreement in accordance with all required performance standards.

Host Site Locations:

XXXX

Table 1 - Deployment

Site Location		Deadline for Commissioning
1	XXX	XX
2	<i>(Add additional sites as needed, per proposal)</i>	XX

Final Host Site selection is subject to approval by the Trust. Recipient shall provide the Trust with copies of each Host Site Agreement for review and approval prior to execution by Recipient and the Host Site owner, such approval not to be unreasonably withheld. In such cases, Recipient also shall provide the Trust with an executed Host Site Agreement or Lease Agreement and Conditional Assignment Agreement with each Host Site owner before commencing any work or services at such Host Site. Recipient shall not add, remove, or otherwise change any Host Site location without prior written notice to and approval from the Trust.

SOW Requirements:

Without limiting any additional work or services specified in Recipient's Response to RFP, including "Statement of Work", Recipient shall perform and provide the following:

A. Install EV Charging Sites and Chargers.

1. Install EV Charging Sites and Chargers Meeting the Following Requirements at the Approved Host Sites:

1. Installation: The Recipient is responsible for achieving completed installations at each EV Charging Site, to include:
 - a. Obtaining all applicable local, state and federal permits required for installation and operation of the EV Charging Sites;
 - b. Ensuring that all installation work as it pertains to site preparation, curbing, striping, signage, charging equipment, billing and networking systems, and electrical interconnections is installed:
 - consistent with the manufacturers' specifications;
 - consistent with the project design proposed in the response to the RFP and agreed to by the Trust;
 - in accordance with all applicable local, state and federal land use, zoning, and code requirements; and
 - is working properly;
 - c. Coordinating the installation activities with the Host Site, the electric utility, and any contractors needed to complete the work.
 - d. Installations must be complete and fully operational by the dates specified in the Deployment Table, above.
2. Configuration: Recipient shall configure the Charging Sites as follows:
 - a. At least two dedicated parking spaces;
 - b. Two DC Fast Chargers (DCFC), one associated with and accessible from each dedicated parking space, where each DCFC is capable of rapid charging of a suitably equipped light-duty EV, as specified in more detail below; and where each DCFC is capable of delivering a charge to an EV using both SAE CCS Combo standard and the CHAdeMO standard.
3. Charging Equipment Requirements: The Recipient shall ensure that each DCFC dispenser:
 - a. Is new, and unused (not refurbished / remanufactured); and of the most current technology available as of the date of installation;
 - b. Is capable of providing at least 50 kW for a single vehicle;
 - c. Includes all cables, connectors, interfaces, documentation for all components, and any other items necessary for full operation at the Host Site;
 - d. Is factory calibrated (as applicable) prior to, or during installation, in accordance with the Original Equipment Manufacturer (OEM) standards;
 - e. Includes all standard manufacturer accessories;
 - f. Is using the most current software version available as of the time it is installed;
 - g. Has the ability to stop the flow of power when not in use; and should have over-current protection to prevent vehicles from drawing too much power;
 - h. Is certified by the Underwriters Laboratories, Inc. (UL), or equivalent safety standard;
 - i. Is able to withstand extreme weather conditions, including temperature extremes, flooding, ice, heavy snow or rain, and high winds and is protected from malfunctions due to condensation.
 - j. Includes barriers or other configuration to prevent damage from equipment used for snow removal;

- k. Includes screen displays that are user friendly and easy to operate (display should be LCD, LED or equivalent, or better and should be readable in direct sunlight and at night);
 - l. Is tamper-proof and deters vandalism;
 - m. Incorporates a cord management system or method to minimize the potential for cable entanglement, user injury, or connector damage from lying on the ground, and complies with NEC articles 625 as it applies to cord management systems;
 - n. Complies with all National Electrical Code and Federal Communications Commission regulations for safety and operation requirements;
 - o. Complies with accessibility standards under the ADA;
 - p. Is capable of remote diagnostics and remote customer support; and,
 - q. Is accessible to all members of the public, with no membership required to a specific network for access.
4. Networking: The DCFC must connect to a network via Wi-Fi, cellular, or other connection using multiple carriers with acceptable industry standard network security.
5. Signage: The Recipient shall arrange and install signage with the Host Site and provide signage on the grounds of the Host Site as follows:
- a. General Requirements: Signage complies with all applicable local, state, and/or federal laws, ordinances, regulations, and standards.
 - b. On-Site: Clearly identifies to an approaching driver from any ingress, that the Host Site has an EV Charging Site and the location of the EV Charging Site. On-site signage should identify parking is reserved for electric vehicles only.
6. Accessibility and Availability: The Recipient is responsible to ensure that Host Sites are:
- a. Publicly accessible 24 hours per day, seven (7) days a week;
 - b. On a paved or hardscaped parking space that is clearly marked to designate the spaces as reserved for EV Charging Station parking;
 - c. Have dusk-to-dawn area lighting; and
 - d. Include appropriate safety instructions for EV drivers regarding the proper use of the charging equipment.
 - a. The Recipient must **not** move an EV Charging Site or Chargers to another Host Site location, or sell, transfer, or take an EV Charging Site out of service for any reason without prior written approval from the Trust.

B. Provide Operation, Maintenance, and Customer Support Services.

1. Operation and Maintenance: The Recipient will, during the entire Term:
- a. Be responsible for ensuring payment of all operating and maintenance costs including, but not limited to, royalties, licenses, fees, taxes, revenue sharing, utilities, and electric power supply for the charging equipment and supporting elements, such as area lighting.
 - b. Operate and maintain each EV Charging Site for at least five (5) years from the date the Charging Site(s) developed under this Project becomes fully operational.
 - c. Maintain all chargers including cables, ancillary equipment, and any awnings, canopies, shelters and information display kiosks for signage associated with the Charging Sites. "Maintain" as used in this SOW means to provide all needed repairs or desired and approved alteration, as well as regular maintenance needed to ensure optimal performance and minimize downtime. Equipment shall be kept safe and presentable.
 - d. Address any issues such as, but not limited to, malfunctions and repairs. The Recipient must ensure that each individual EV Charger has Uptime of at least 95% over the course of 365 consecutive days, starting from the time the Charging Site becomes operational, and that Downtime does not exceed 72 consecutive hours.
 - i. Except to the extent caused by Recipient's breach of this Agreement or the

negligence or misconduct of Recipient or its agents, Recipient shall not be responsible for, and makes no representation or warranty with respect to the following: (i) continuous availability of electrical service to Chargers; (ii) continuous availability of any wireless or cellular communications network or Internet service provider network necessary for the continued operation by Recipient of its services; (iii) availability of or interruption of the Network attributable to unauthorized intrusions, and (iv) force majeure.

- e. It is the Recipient's responsibility to ensure the 95% Uptime requirement and the 72 hour Downtime limit are met. For significant or complex issues leading to extended downtime (such as vandalism), the Recipient shall:
 - i. Notify appropriate informational sources so drivers are aware including, but not limited to, website and mobile applications, as appropriate.
 - ii. Inform the Trust via email within one business day to explain the situation and management plan to mitigate the problem.
- f. Ensure adequate snow removal to ensure access during and after inclement weather.

2. Customer Payment Options: Each EV Charger at the Charging Sites must for the entire Term:

- a. Be capable of supporting multiple point-of-sale methods, including but not limited to: _____; and credit card via toll-free number available 24/7 without incurring excessive fees, inconvenience or delays versus other payment or access control methods. Recipient may exercise commercially reasonable efforts to add other relevant technologies and methods of payment as may be developed from time to time.
- b. Have a point-of-sale and supporting network that uses an open protocol to allow subscribers of other EV charging system networks to access the EV Chargers at the Charging Sites.
- c. Have state of the art security features to safeguard customer payment and identity information including, without limitation, such features as are in compliance with all relevant Payment Card Industry Compliance (PCI) standards as such may be amended from time to time.

3. Data Capture Requirements: Each EV Charger must for the entire Term have technical capability and network communications that, at a minimum, provide the following information about each charging transaction, at each charging location:

- a. Charging data such as date and time of usage (session length and start and stop time) and accurate utilization rates (including unique driver utilization rates);
- b. Total kWh and Total kW draw;
- c. Applicable usage rate or fee and total dollar amount charged to the user;
- d. Station status and health
- e. Malfunction or operating error; and
- f. Full site level usage.

This information will be reported quarterly to the Trust as part of Recipient's reporting obligation further specified below for the duration of the Term.

4. Customer Support Services: Recipient shall be responsible to ensure the provision of customer service support as follows:

- a. Be available 24 hours a day, seven (7) days per week via a toll-free telephone number posted on or near the EV Chargers that is clearly visible to the customer.
- b. Provide best-in-class customer support for the duration of the Term, with the ability to provide customer support after the expiration of the Term.

- c. Promptly resolve customer issues over the telephone and remote interaction with the EV Charger, or dispatch service personnel to the Host Site as needed to resolve the issue.
- d. Promptly and professionally resolve any payment processing errors or payments disputes with customers.
- e. Provide and maintain a mobile application enabling drivers to locate charging stations (Recipient network, third-party network, and non-networked stations), view real-time EV Charging Site availability, navigate to EV Charging Sites, start and pay for charging sessions, view real-time charging status, receive alerts on charging events, and view charging history.

5. Pricing:

a. Recipient shall prominently display all charges, costs, and fees at each Charging Station, which information must be made available to the customer prior to initiating an EV charge transaction.

b. Recipient shall provide the Trust with all financial rates, charges, costs, and fees it intends to assess in connection with utilization of each Charger at each Host Site. Any proposed increase in rates, charges, costs, or fees for use of any Charger at a Host Site must be submitted to the Trust for review prior to implementation. Recipient shall not increase rates, charges, costs, or fees in any 12 month period by more than the rate of increase of local electricity supply in that area during that period, expressed as a percentage, without the Trust's prior written approval, provided, however, that any return to the prior rates, charges costs or fees after a temporary reduction (such as for a promotion) in such rates, charges, costs or fees shall not require the Trust's approval.

c. Recipient acknowledges that the Incentive Award is intended to advance the public policy purposes of the Program for the benefit of the travelling public and to promote market transformation of increased use of EVs in Maine by accommodating charging from early adopters of EVs, raising awareness of the functionality and economy of EVs, and promoting a good experience for EV users. Recipient acknowledges that a significant portion of Recipient's equipment and installation cost at each EV Charging Site is subsidized by the Incentive Award. Recipient acknowledges that Maine's objective is that any financial charge, cost, or fee assessed in connection with utilization of any EV Charger be commercially reasonable. Recipient's goal is to price charging at, or below gas parity and in no circumstances above +25% of the cost of the amount of gasoline needed for an average passenger vehicle to travel the same distance provided by the charging event, where the average passenger vehicle fuel economy is 27.9 mi/gal, the average EV efficiency is 3.06 mi/kWh, and the price of a gallon of regular gasoline in New England is as calculated by the US Energy Information Administration. (https://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_r1x_a.htm). The goals and limitations on pricing of EV charging that are enumerated in this paragraph do not impact or limit pricing of parking after an EV's battery is fully charged.

C. Manage Host Site Relationship

The Recipient shall be solely responsible to secure and maintain the designated Host Sites as necessary for the performance and operation of the Project for the entire Term, to include at a minimum:

- a. Written, enforceable deed, lease, easement, or occupancy agreement granting Recipient all necessary rights to install, operate, and maintain the Charging Sites as required under this Agreement throughout the entire Term;
- b. A written provision acknowledging the Recipient's ownership interest in the EV Charging Site equipment and prohibition on the Host Site owner of any interference with the operation and use of the Charging Site or assertion of any interest, lien or encumbrance in the EV Charger or Charging Site equipment by the Host Site owner or any third-party creditor of the Host Site owner;
- c. Cause the Host Site owner to execute a Conditional Assignment of Lease in the form attached hereto as Rider E and acknowledge and recognize the Trust's rights, upon default by Recipient under this Agreement or exercise by the Trust of its option under the Option Agreement, to assume and succeed to all of Recipient's rights to occupy and use the Host Site and Charging Site to the same extent and under the same terms as Recipient for the duration of the term of the Host Site Agreement;
- d. Be executed by individuals who have the legal power and authority to enter into a Host Site agreement, and identify the name, title, and capacity on behalf of the entity represented; and
- e. A disposition plan for the EV Charging Sites in the event the Host Site agreement is terminated and not assumed by the Trust or the Trust does not acquire the Charging Site equipment under the Security Agreement or Option Agreement.

D. Reporting

The Recipient shall provide the following reporting at the specified intervals during the entire Term:

Without limiting any additional data collection and reporting as specified in Section 5 "Statement of Work" of Recipient's Response to RFP, Recipient shall provide the following reporting to the Trust:

- For the period from the effective date of this Agreement through the date of final commissioning of each EV Charging Station at each Host Site, Recipient will provide a **monthly construction update** by Host Site location to include status of: Host Site agreements, permits, utility assessment and interconnection, site construction progress, charger installation, and station commissioning.

For the period from the commissioning of each EV Charging Site through the entire Term of this Agreement, Recipient will provide the Trust access to its Network Operating System. The Network Operating System will enable the Trust to generate ad hoc, operational reports to include plug time, day and time of charge event, length of time charging, length of time connected, kWh provided per charging event and aggregate, total dollar amount charged to each user, and number of unique users for each EV Charging Site.

For the period from the commissioning of each EV Charging Site through the entire Term of this Agreement, Recipient will provide quarterly **status reports** to include:

- **Maintenance reports** detailing Charging Site and Charger status, maintenance dispatches, service and repair response time, station Uptime, and any other notable events.
- **Operational reports** by Charging Site detailing plug time, day and time of charge event, length of time charging, length of time connected, kWh and KW provided per charging event and aggregate, total dollar amount charged to each user, and number of unique users.
- **Customer service reports** by Charging Sites detailing the type and number of customer service issues received. Reports should include a description of any unresolved issues and a plan to resolve them.

Notable Downtime issues shall be reported to the Trust within one business day. In addition, Recipient shall provide a system availability and response time report within three business days upon request by the Trust.

Recipient shall provide such other reporting and shall provide such other information relevant to the EV Chargers, Charging Sites, and Host Sites as the Trust may reasonably request from time to time.

RIDER B**PAYMENT SCHEDULE AND PROJECT MILESTONES**

Contract No. _____

Charger Installation IncentiveUp to \$ _____
This amount does not include the Demand Charge Incentive

INVOICES AND PAYMENTS. The Trust will disburse the Incentive Award to Recipient in installments upon full completion or satisfaction of each deliverable as follows:

1. Deliverable 1: Secure Host Site agreement, site development and utility upgrades. Up to 20% of the Incentive Award will be **disbursed** following documentation **of all of** the following deliverables for a Host Site:

- Host Site agreement executed
- Executed Conditional Assignment of Lease with copies to Trust
- Final site drawings and installation plans
- Utility interconnection fees paid

For awards that cover more than one EV Charging Site, the Trust will pay this portion of the Incentive Award pro rata for each individual site when the site completes the deliverable.

2. Deliverable 2: Acquisition, installation and commissioning of all equipment and connection of utility and communication services at EV Charging Site. Payment of 80% of the Incentive Award will be disbursed following documentation **of all of** the following deliverables:

- Installation of Chargers
- EV Charging Site complete and operable
- Delivery of as-built drawings
- Notification to Trust of completion and intent to operate
- Executed Security Agreement
- EV Charging Stations visible at the Department of Energy's Alternative Fuels Data Center (http://www.afdc.energy.gov/fuels/electricity_locations.html)
- EV Charging Station realtime availability and status available at _____ .com and the _____ mobile app
- Payment Options:
 - _____.
 - _____.
 - Credit Card. Drivers may call the toll-free number clearly displayed on every station 24/7 in order to authorize charging or _____.
 - Recipient may exercise commercially reasonable efforts to add other relevant technologies and methods of payment as may be developed from time to time.

Recipient may issue an invoice for each site individually, after the EV Charging Site is commissioned and the Chargers for the site are placed in service.

For awards that cover more than one EV Charging Site, the Trust will pay this portion of the Incentive Award pro rata for each individual site when the site completes the deliverable.

3. Deliverable 3: Provide operations, maintenance and customer service for a five-year term.

Payment of the **Demand Charge Incentive**, pursuant to the schedule defined in Section 3 of the RFP, will be **disbursed quarterly, on a per site basis**, following documentation **of all of** the actual utility

demand charges incurred and paid during the most recently completed quarter and subject to the application of any service credits pursuant to Section 5 of this Rider.

4. Documentation and Process for Invoices. Invoices for payment must contain sufficient detail to establish completion of the relevant deliverable or milestone, reference the contract number, and include copies of invoices associated with the Recipient's Project equal to or greater than the associated disbursement amount requested. In lieu of mailing, invoices and supporting documentation may be submitted via electronic mail to accountspayable@efficiencymaine.com, with a copy to the Agreement Administrator.

Payments are subject to the Recipient's compliance with all terms set forth in this Agreement and subject to the availability of funds. Without limiting any other right or remedy of the Trust Recipient's failure to operate and maintain the EV Charging Equipment consistent with the terms of this Agreement will result in withholding of some or all subsequent payments. No invoice will be processed for payment until approved by the Agreement Administrator. The Trust will process approved payments within 30 days. The Trust is not responsible for any direct payments to Recipient's contractors or vendors.

5. Service Credits and Service Level Agreement

The Trust shall be entitled to a credit to be applied against the Recipient's Demand Charge Incentive (a "Service Credit") as follows for Recipient's failure to achieve the service levels and performance standards required by the Agreement. Recipient's Demand Charge Incentive and credits shall be calculated quarterly on a site-by-site basis.

- a. Limiting Individual DCFC Downtime: In the event that a Downtime event for an individual DCFC is not remedied within 72 hours, as required in Rider A, Section B(1)(d), the Trust is entitled to a Service Credit of:
 - i. 15% of the quarterly Demand Charge Incentive for the first occasion during the quarter,
 - ii. 50% of the quarterly Demand Charge Incentive for the second occasion during the quarter,
 - iii. 100% of the quarterly Demand Charge Incentive upon the third occasion during the quarter.
- b. Annual Uptime for Each DCFC: The Trust is entitled to an annual credit of 100% of the fourth quarterly Demand Charge Incentive in the event that Recipient fails to achieve annual the Charging Site Uptime standard described in Rider A, Section B(1)(d).
- c. Customer Service and Reporting: The Trust also shall be entitled to a Service Credit equal to 5% of the quarterly Demand Charge Incentive per site for each documented incident of the Recipient's failure to provide customer service in accordance with the service and performance levels required by this Agreement or fails to provide complete and timely reporting as required by the Agreement. Recipient shall have 5 days to remedy any issues related to timely reporting before a Service Credit penalty is incurred.

Except to the extent caused by Recipient's breach of this Agreement or the negligence or misconduct of Recipient or its agents, Service Credits will not be assessed and shall not be due where the failure to satisfy a required service level results from unavailability of electrical service to Chargers; unavailability of any wireless or cellular communications network or Internet service provider network necessary for the continued operation by Recipient of its services; unavailability of or interruption of the Recipient's network attributable to unauthorized intrusions; or force majeure or unforeseeable circumstances beyond Recipient's reasonable control that prevent Recipient from performing its obligations under this Agreement.

The Service Credits shall not be considered liquidated damages or the Trust's sole and exclusive remedy for Recipient's failure to meet required service levels or performance standards. The Trust shall be entitled to any other rights or remedies set forth in the Agreement.

RIDER C**GENERAL TERMS AND CONDITIONS**

1. **INDEPENDENT CONTRACTOR.** Recipient is an independent contractor with respect to all work or services performed under this Agreement. It is the express understanding and intention of the Parties that no relationship of master and servant or principal and agent shall exist between the Trust and the employees, agents, or representatives of Recipient. Recipient shall be solely responsible for the performance and conduct of its employees, agents, and contractors. Recipient shall only employ or engage personnel who are authorized to work in the United States and Recipient shall comply with all applicable labor, employment, and occupational safety laws and regulations in the performance of this Agreement. Recipient is solely responsible to withhold and pay all taxes, assessments and fees levied in connection with Recipient's performance of this Agreement and Recipient is solely responsible to pay all wages, payroll taxes, and statutory benefits for Recipient's employees and agents. Recipient has no authority to represent or bind the Trust in any manner.
2. **ASSIGNMENT.** Recipient shall not assign or otherwise transfer or dispose of its rights, interest, duties or obligations under this Agreement, including any right or interest in the equipment or measures funded with the Incentive Award, without the prior express written consent of the Trust, which may be granted, conditioned or denied in the Trust's reasonable discretion. Any purported transfer or assignment without the prior written consent of the Trust shall be null and void.
3. **EQUAL EMPLOYMENT OPPORTUNITY; NON-DISCRIMINATION.** During the performance of this Agreement, Recipient shall abide by all applicable equal employment opportunity and nondiscrimination statutes, regulations, and orders including, without limitation, the Maine Human Rights Act. The provisions of 5 MRSA §784 are incorporated herein by reference and Recipient shall cause the such provisions to be inserted in any contract or subcontract for any work covered by this Agreement so that such provisions shall be binding upon each contractor or subcontractor.
4. **EMPLOYMENT AND PERSONNEL; STATE EMPLOYEES NOT TO BENEFIT.** Recipient shall not engage any person in the employ of the Trust or any State department or agency in a position that would constitute a violation of 5 MRSA § 18-A (Conflicts of Interest in Contracts with State) or 17 MRSA § 3104 (Conflicts of Interest in State Purchases). No individual employed by the Trust or the State at the time this Agreement is executed or any time thereafter during the Term shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom that would constitute a violation of 5 MRSA § 18-A or 17 MRSA § 3104. Recipient shall not engage on a full-time, part-time or other basis during the Term any other personnel who are or have been at any time during the Term in the employ of the Trust or any State department or agency, except regularly retired employees, without the written consent of the Executive Director of the Trust. Recipient shall not engage on this Project on a full-time, part-time or other basis during the Term any retired employee of the Trust who has not been retired for at least one year, without the written consent of the Executive Director of the Trust.
5. **NO SOLICITATION WARRANTY.** Recipient warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for Recipient, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the Incentive Award or this Agreement.
6. **LOBBYING.** No State-appropriated funds shall be expended by the Recipient for influencing, or attempting to influence, an officer or employee of any agency, a member of the State Legislature, an officer or employee of the State Legislature, or an employee of a member of the State Legislature, in connection with the awarding of any agreement, the making of any grant or award,

the entering into any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any agreement, grant, award, or cooperative agreement.

7. RECORD RETENTION AND INSPECTION. 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 three (3) years following the expiration or termination of this Agreement. Recipient shall permit the Trust or its authorized representatives, upon reasonable notice to Recipient, 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.
8. ACCESS TO PUBLIC RECORDS. As a condition of accepting any public funds under this Agreement, Recipient hereby acknowledges and agrees that documents and information relating to Recipient's Project, the Incentive Award, and this Agreement, other than information designated confidential by statute, may be treated as public records under the freedom of access laws. The Trust requires transparency on how funds are managed, awarded, and spent. Accordingly, subject to the foregoing limitation on designated confidential information, Recipient hereby agrees to permit disclosure of information about Recipient's Project and how Incentive Awards and Program funds were awarded and spent.
9. COMPLIANCE WITH LAW. Recipient shall, and shall cause its contractors and agents to, comply with all applicable laws, rules, regulations and ordinances in the performance of this Agreement. Recipient is responsible to obtain and maintain all permits, licenses, and other approvals as may be required for performance of the Agreement and implementation of the Project throughout the Term.
10. INDEMNIFICATION. Recipient agrees to indemnify, defend and save harmless the Trust and its officers, directors, trustees, agents and employees from and against any and all demands, suits, actions, claims, injuries, liabilities, losses, damages, costs, fees, and expenses (including attorney fees and legal expenses and the costs of enforcing any right to indemnification under this Agreement) ("Claim") made against or suffered or incurred by the Trust resulting from or arising out of Recipient's performance of this Agreement, the Project, and the installation or operation of the equipment or measures funded in whole or in part by the Incentive Award provided by the Trust. Claims to which this indemnification applies include, without limitation: (i) claims of any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other entity providing work, services, materials, equipment or supplies in connection with the performance of this Agreement or the Project; (ii) claims of any Host Site owner or Host Site occupant or invitee and any customer or user of the Charging Sites; (iii) personal injury, death, or property damage suffered or incurred by any person or entity arising from the Recipient's or its agent's performance (act or omission) of this Agreement and the installation, maintenance, or operation of the Project, including claims of Recipient's employees, agents, or contractors; and (iii) claims arising or resulting from Recipient's breach of this Agreement or violation of law. Recipient's indemnity obligations shall apply to the full extent of the negligence or misconduct of Recipient or those for which it is legally responsible and shall apply without regard to any immunity that might otherwise be accorded Recipient under the workers' compensation laws. Recipient will not indemnify for any Claim to the extent caused by the negligence or willful misconduct of the Trust or its officers, directors, trustees, agents and employees. This indemnification is intended to be as broad as the law allows.
11. NOTICE OF CLAIMS. Recipient shall give the Agreement Administrator immediate notice in writing of any legal action or suit threatened or filed related in any way to the Agreement or Project or which may affect the Recipient's performance of the Agreement or the Project.
12. APPROVAL. This Agreement must have the written approval of the Executive Director of the Trust before it can be considered an enforceable contract binding on the Trust.

13. 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. Recipient is solely responsible for payment of all excise, sales, use, property, employment, income and other taxes and assessments relating to the Project and Recipient's business operations.
14. INSURANCE. Recipient shall procure and maintain commercial general liability insurance with coverage for the activities and risks associated with the Project and with coverage limits sufficient to protect itself and the Trust, as additional insured, from claims arising from the Project, including any contractual liability of Recipient under this Agreement. Recipient shall procure and maintain workers' compensation insurance coverage as required under Maine law. Recipient shall procure and maintain replacement value "special causes of loss" property and casualty insurance covering the equipment funded with the Incentive Award provided by the Trust. Prior to disbursement of any Incentive Award amount, Recipient shall furnish the Trust with a certificate of insurance or other written verification of the existence of all such insurance coverages required under this Agreement.

Without limiting the foregoing, Recipient shall maintain the following minimum insurance throughout the Term, which coverage types and amounts do not serve to limit Recipient's obligation or liability to the Trust under this Agreement:

A. Commercial General Liability

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

- i. \$1,000,000 each occurrence;
- ii. \$2,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate.

B. Property and Casualty

Property and casualty insurance covering full replacement value in the event of loss or damage to Chargers and other Charging Site equipment and appurtenances.

C. Workers' Compensation

Workers' compensation insurance as required by state law and employers' liability insurance covering all Recipient and contractor employees acting within the course and scope of their employment in connection with the Project.

D. Other Provisions. Unless explicitly waived by the Trust in writing, the insurance policies must contain, or be endorsed to contain, the following provisions:

- (i) Recipient's commercial general liability policies shall include the Trust as an additional insured. Recipient's insurance coverage shall be the primary insurance. Any insurance or self-insurance maintained by the Trust for its officers, agents, and employees shall be in excess of the Recipient's insurance and shall be non-contributory.
- (ii) Recipient's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (iii) Recipient shall furnish the Trust with certificates of insurance and endorsements confirming all coverage required by these insurance requirements. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Trust before this Agreement commences. The Trust reserves the right to require complete copies of all required insurance policies at any time.
- (iv) All policies should contain a revised cancellation clause allowing thirty (30) days' notice to the Trust in the event of cancellation for any reason, including nonpayment.

15. AVAILABILITY OF DESIGNATED PROGRAM FUNDS. It is understood and agreed that the sole sources of the Incentive Award are that portion of the VW Settlement Funds expressly allocated under the Maine Beneficiary Mitigation Plan to develop EV charging infrastructure in accordance with the Phase 3 RFP and the portion of the NECEC Settlement Funds allocated for the promotion of EV charging infrastructure. The Trust's obligation to pay Recipient shall be contingent upon such funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from the expressly designated funds, and the Trust's liability for such payments shall be limited to the amount remaining of such expressly designated funds. If the VW Settlement Funds expressly allocated under Maine's Beneficiary Mitigation Plan to develop EV charging infrastructure, or and NECEC Settlement Funds, in accordance with the Phase 3 RFP are not appropriated or otherwise become unavailable to fund this Agreement, the Trust may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The Trust shall, however, remain obligated to pay for all work and services that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest. The Trust makes no commitment to pay the Incentive Award from other Trust, agency, or state funds for any reason and the Recipient expressly waives any right to demand or receive payment from any such non-designated funds.
16. FORCE MAJEURE. The obligations of each party under this Agreement shall be excused for the duration of any Force Majeure Event that prevents a Party's ability to perform such obligations. A "Force Majeure Event" shall mean an act of God, act of war, riot, fire, explosion, flood or other catastrophe, or other condition or circumstance beyond the reasonable control of a Party and which could not reasonably be avoided by the Party claiming Force Majeure. The Party claiming Force Majeure shall notify the other Party upon the occurrence of a Force Majeure Event that will or is expected to prevent performance under this Agreement. The Trust may terminate this Agreement if a Force Majeure Event lasts more than 90 days.
17. SET-OFF RIGHTS. Without limiting any other right or remedy, the Trust shall have all common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Trust's option to withhold for the purposes of set-off any monies due to Recipient under this Agreement up to any amounts due and owing to the Trust with regard to this Agreement or any other agreement between Recipient and the Trust, including any agreement for a term commencing prior to the term of this Agreement.
18. RESERVATION OF IMMUNITIES AND LIMITATION OF LIABILITY. The Trust is a quasi-state agency and a governmental entity. Nothing in this Agreement is intended, nor shall be construed, to constitute a waiver of any defense, immunity, or limitation of liability that may be available to the Trust as a governmental entity, or to any of its officers, agents or employees, pursuant to the Eleventh Amendment to the Constitution of the United States of America, the Maine Constitution, the Maine Tort Claims Act (14 M.R.S.A. § 8101 et seq.), any state or federal statute, the common law, or any other privileges or immunities as may be provided by law. In no event shall the Trust be liable or responsible to the Recipient for any indirect, incidental, consequential, or exemplary damages of any kind.
19. NO THIRD-PARTY BENEFICIARIES. There are no express or intended third-party beneficiaries under this Agreement. No person or entity that is not a party to this Agreement may assert any right or make any claim under this Agreement.
20. EFFICIENCY MAINE LOGO; PUBLIC DISCLOSURE. The "Efficiency Maine" name and logo are registered trademarks of the Trust. The Trust grants Recipient a limited, revocable, non-exclusive license to use the Efficiency Maine logo in connection with the Project to publicly acknowledge the Trust's funding and participation in the Project. Any such use must be in strict accordance with the Trust's design, image, and placement standards. The license to use the "Efficiency Maine" marks is revocable by the Trust at any time. Recipient shall, upon request of the Trust and at the Trust's own expense, display such mutually agreed upon signage or other notices at each EV Charging

Site as may be reasonably required by the Trust acknowledging the support of the Trust, the Maine Department of Transportation, and/or State of Maine.

21. DATA IN SUPPORT OF PROGRAM. Recipient grants authorization to the Trust or its agents to access facilities and to collect data needed to measure and verify usage and operation of equipment and measures funded with the Incentive Award.
22. INFORMATION IN SUPPORT OF THE PROGRAM. The Trust is required to report on use of and the performance of energy efficiency and conservation programs and projects. Information from these reports, including kWh dispensed and total number of sessions may be made available to the public. Recipient agrees to cooperate with the Trust on such reporting and shall provide information related to the Incentive Award, this Agreement, the Project, and any related agreement as requested or required by the Trust 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.
23. SITE VISITS. The Trust has the right to make site visits at reasonable times to review Project progress, performance, and operation. Recipient shall provide reasonable access to Charging Sites and facilities and shall provide reasonable assistance for the safety and convenience of the Trust and its representatives to perform their duties. All site visits will be performed in a manner that does not unduly interfere with or delay the work or operations of Recipient or its contractors. Site visits shall be subject to Recipient's reasonable facility access, safety, security, and confidentiality policies.
24. MEASUREMENT AND VERIFICATION. Recipient shall allow independent third-party verification of Project performance and utilization under terms as may be established by the Trust. Recipient shall work in good faith with the Trust to develop a measurement and verification plan designed to assess the efficacy of the Project. Recipient shall conduct and cooperate in such auditing and reporting as may be necessary to assess performance of the Project and to provide information as may be necessary or useful for the Program.
25. VENDOR OR CONTRACTOR SELECTION. Recipient may select any vendor or contractor to provide the equipment and perform the work contemplated by this Agreement.
26. CONFIDENTIALITY AND DATA SECURITY. All records and information given to the Recipient by the Trust whether in verbal, written, electronic, or any other format, shall be regarded by the Recipient as confidential information.

Recipient shall keep confidential, and shall cause all of its employees, agents and contractors to keep confidential, all Trust records and information, unless those Trust records are publicly available. Recipient shall not, without prior written approval of the Trust, use, publish, copy, disclose to any third party, or permit the use by any third party of any Trust confidential records and information except as otherwise stated in this Agreement, permitted by law, or approved in writing by the Trust. Recipient shall immediately forward any request or demand for Trust records or information to the Trust's Agreement Administrator.

Recipient shall use, hold, and maintain Trust confidential records and information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality and security of all Trust confidential records and information wherever located. Recipient shall provide the Trust with access, subject to Recipient's reasonable security requirements, for purposes of inspecting and monitoring access and use of Trust confidential records and information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Recipient shall return Trust confidential records and information provided to Recipient or destroy such Trust confidential records and information and certify to the Trust that it has done so, as directed by the Trust. If Recipient is prevented by law or regulation from returning or destroying Trust confidential records

and information, Recipient warrants it will maintain the confidentiality of, and cease to use, such Trust confidential records and information.

If Recipient becomes aware of any accidental or deliberate event that results in or constitutes an imminent threat of unauthorized access, loss, disclosure, disruption, or destruction of any Trust confidential records or information, it shall notify the Trust immediately and, at its expense, take prompt steps to prevent or remediate such loss.

Recipient shall safeguard all personally identifiable information (PII) it may receive in connection with the performance of this Agreement. PII means information about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. If Recipient or any of its contractors will or may receive PII in connection with the performance of this Agreement, Recipient shall provide for the security of such PII and shall implement administrative, physical, and technical safeguards to protect PII from unauthorized access, acquisition, or disclosure, destruction, alteration, accidental loss, misuse, or damage that are no less rigorous than accepted industry practices, and shall ensure that all such safeguards, including the manner in which PII is created, collected, accessed, received, used, stored, processed, disposed of, and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement. Recipient shall take full responsibility for the security of all PII in its possession or in the possession of its contractors and shall hold the Trust harmless from and against any damages or liabilities resulting from an unauthorized disclosure or data breach.

Without limiting any other data privacy or security obligations imposed on Recipient under any applicable law, regulation, ordinance, or standard, if, in the course of performing this Agreement, Recipient has access to or will collect, access, use, store, process, dispose of, or disclose credit, debit, or other payment cardholder information, Recipient shall at all times remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at Recipient's sole cost and expense.

The Trust shall have the right, upon reasonable notice to the Recipient, to audit, review, and inspect the Recipient's records and procedures for compliance with these confidentiality provisions.

27. **ADDITIONAL CONTRACTING REQUIREMENTS.** All requirements, restrictions and obligations regarding the use of State or Trust funds and Incentive Awards are deemed incorporated in this Agreement to the extent necessary to ensure compliance with applicable law. Any alterations, additions, or deletions to the terms of the Agreement that are required by changes in law or regulation governing the use of State or Trust funds or Incentive Awards are automatically incorporated in the Agreement without the necessity of a formal written amendment. Recipient agrees to comply with all such requirements, restrictions and obligations and shall cause its contractors to comply with all such requirements, restrictions and obligations.
28. **SURVIVAL.** The terms, conditions and obligations in this Agreement which by their nature or intent continue beyond termination or expiration of this Agreement, including, without limitation, provisions regarding document retention, audit, site visits, reporting, indemnity and remedies, shall survive the termination or expiration of this Agreement.

Rider D

SECURITY AGREEMENT

1. Grant of Security Interest, Parties and Collateral

_____, a corporation organized and existing under the laws of the State of _____ whose mailing address is _____ (hereinafter referred to as "Obligor"), for valuable consideration, including the sum of up to XXXXXX DOLLARS (\$ _____) paid and advanced to Obligor by **EFFICIENCY MAINE TRUST** whose mailing address is Efficiency Maine Trust, 168 Capitol Street, Suite 1, Augusta, Maine 04330-6856 (together with its successors and assigns, "Secured Party"), the receipt and sufficiency of which is hereby acknowledged, grants to Secured Party a continuing first priority purchase money security interest (the "Security Interest") in the property of Obligor, whether now existing or hereafter acquired or arising, listed on Exhibit A attached hereto and made a part hereof by reference (the "Collateral").

2. Obligations Secured

(a) The Security Interest is given to secure:

(i) Obligor's obligations to Secured Party under a certain Maine Electric Vehicle Charging Incentive Agreement dated _____ between Obligor and Secured Party (such Agreement being hereinafter referred to as the "Incentive Agreement"), including, without limitation reimbursement obligations under the Incentive Agreement and/or under this Agreement;

(ii) Obligor's obligations to Secured Party under a certain Option Agreement between Obligor and Secured Party of near or even date with this Agreement; and

(iii) All reasonable costs, including reasonable attorney and paralegal fees and charges, including but not limited to attorney and paralegal fees and charges arising in bankruptcy proceedings, incurred by Secured Party in proving or enforcing this Agreement and/or the Incentive Agreement or Option Agreement.

(b) All of the obligations described in both subsections of 2(a) above (as either may be modified from time to time) are sometimes hereinafter referred to collectively as the "Obligations." The Security Interest created by this Agreement shall continue until all Obligations are satisfied in full.

3. Warranties and Covenants of Obligor

Obligor hereby makes the following warranties and covenants and agrees to perform the following duties in addition to any warranties or duties which may be prescribed by the Maine Uniform Commercial Code as amended from time to time (hereinafter the "Maine UCC") and not stated:

(a) Use of Collateral. The Collateral arises out of business uses or is used for business purposes.

(b) Collateral Location. The Obligor will keep and maintain the Collateral at the Host Sites more particularly described in Exhibit B to this Agreement.

(c) No Liens or Other Encumbrances. Obligor has not and will not pledge nor grant any security interest in the Collateral to anyone except Secured Party without the prior consent of the Secured Party. Obligor will not permit any lien or encumbrance to attach to the Collateral, nor permit any levy to be made thereon, nor permit any authorized financing statement covering the Collateral to be filed in any public office.

(d) Owner of Collateral. Obligor is the owner of the Collateral free and clear of any security interest, lien, encumbrance, or adverse claim, except the security interest hereby given to Secured Party. Obligor will defend the Collateral and the security interest created hereby against all claims and demands of all other persons who may assert a claim of ownership or a lien, encumbrance or security interest against or with respect to the Collateral at any time.

(f) Legal Name and Location. Obligor is organized and existing under the laws of the State of Delaware and will not change its name, form or jurisdiction of organization, without Lender's prior written consent.

(g) No Other Financing Statements. No financing statement covering or purporting to cover the Collateral is on file in any public office nor is any unfiled, perfected security interest outstanding on the Collateral. Secured Party may request, and Obligor shall execute, any further instruments in form satisfactory to Secured Party, and Obligor shall pay all filing and other costs deemed necessary or desirable by Secured Party, to perfect and to continue its security interest in the Collateral.

(h) Insurance. Obligor agrees to insure the insurable Collateral against loss or damage by fire or other casualty, the perils against which insurance is afforded by Special Causes of Loss Multi-Peril Insurance (also known as Special Form Coverage) subject to normal exclusions in such amount as required to provide payment in full of the costs of complete replacement and restoration of any damage and/or destruction to said Collateral resulting from casualty required to be insured hereunder.

(i) Taxes and Other Charges. Obligor agrees to pay and discharge when due all taxes, levies, and other charges duly imposed upon the Collateral.

(j) No Transfer. Obligor agrees not to sell or offer to sell or otherwise transfer any of the Collateral without the prior written consent of Secured Party. Any such transfer, if made without consent, is a default under this Agreement, whether such transfer is voluntary or involuntary.

(k) Maintain Collateral. Obligor agrees to maintain and repair the Collateral as necessary to keep it in good condition, and not to waste, destroy, or voluntarily damage the Collateral. Obligor will not use the Collateral in violation of any statute, ordinance, or governmental regulation. Secured Party may examine and inspect the Collateral at any reasonable time wherever located.

4. Events of Default

Obligor shall be in default under this Agreement upon the occurrence of any of the following events and conditions:

- (a) Default under the Incentive Agreement.
- (b) Default under the Option Agreement.
- (c) Any warranty, representation or statement made or furnished to Secured Party by or on behalf of Obligor, which is or was false in any material respect when made or furnished.
- (d) Uninsured loss, theft, substantial damage or destruction of a material portion of the Collateral, except as provided herein, or encumbrance to or of the Collateral or the making of a levy, seizure or attachment upon the Collateral.
- (e) Any voluntary or involuntary transfer, in any manner of Obligor's rights in the Collateral.
- (f) Dissolution, termination of existence, insolvency, or business failure of Obligor, appointment of a receiver for any part of the Obligor's property or assignment for the benefit of creditors by Obligor, or the commencement of any proceeding under a bankruptcy or insolvency law by or against Obligor or any guarantor or surety of Obligor.

In the event of a breach, the Secured Party shall give written notice of breach to Obligor. If Obligor does not cure the breach within 30 days after having received Notice from Secured Party, Secured Party may then proceed with the Remedies set forth in Section 5 below. Notwithstanding the foregoing, in no

event shall the cure period set forth herein serve to extend or be in addition to any cure period or notice period specified in the Incentive Agreement or Conditional Assignment of Lease.

5. Remedies Upon default and at any time thereafter, Secured Party may declare all obligations secured hereby immediately due and payable and may proceed to enforce payment and performance of the same and take possession of the Collateral and exercise any and all of the rights and remedies provided by Maine law, including the Maine UCC as amended from time to time, as well as any other rights and remedies possessed by the Secured Party. Secured Party may require Obligor to assemble the Collateral and make it available to Secured Party at a place reasonably convenient to both parties.

6. Rules of Construction

(a) No waiver by Secured Party of any default shall be effective unless in writing.

(b) This Agreement shall be binding upon the successors and assigns of Obligor.

(c) Use of the word "Collateral" includes the entire body of collateral as set forth in Paragraph 1 hereof, and also any products, portions, or proceeds thereof.

(d) If any provision of this Agreement is declared invalid or ineffective, all other provisions shall continue in full force and effect and Obligor shall continue to be liable under this Agreement.

(e) This Agreement shall be governed for all purposes by the internal laws of the State of Maine, exclusive of its conflicts of law rules, and the parties consent to the exclusive jurisdiction of the state and federal courts located in the State of Maine for resolution of any disputes relating to this Agreement.

7. Waiver of Right to Jury Trial. The respective parties hereto shall and hereby do **WAIVE TRIAL BY JURY** in any action, proceeding, counterclaim, objection to claim in a bankruptcy case or other litigation of any type brought by either of the parties against the other on any matter whatsoever arising out of, related to, or in any way connected with the Obligations and/or this Security Agreement, or the transactions contemplated hereby. Without in any way limiting the foregoing, the parties further agree that their respective right to a trial by jury is waived by operation of this paragraph as to any action, counterclaim or other proceeding which seeks, in whole or in part, to challenge the validity or enforceability of the existing Obligations and/or this Security Agreement, or any provision thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of _____, 20XX.

WITNESS:

OBLIGOR:
XXXXXXX, INC.

By: _____
Name: XXXXX
Its: XXXXX

SECURED PARTY:
EFFICIENCY MAINE TRUST

By: _____
Name: XXXXX

RIDER E

CONDITIONAL ASSIGNMENT OF LEASE

THIS CONDITIONAL ASSIGNMENT OF LEASE (this "Assignment") is made as of the ___ day of _____, 2021, by and among _____, a corporation organized and existing under the laws of the State of _____ whose mailing address is _____ ("Assignor"), and [LANDLORD NAME] a [ENTITY TYPE] organized and existing under the laws of the State of [STATE] whose mailing address is [MAILING ADDRESS] ("Host" or "Landlord"), and **EFFICIENCY MAINE TRUST** whose mailing address is 168 Capitol Street, Suite 1, Augusta, Maine 04330-6856 (together with its successors and assigns, "Assignee").

WHEREAS, Assignor is the tenant under a certain Charging Station License Agreement or Host Site Lease Agreement with Landlord dated on or about _____, a true and correct summary of which, together with all amendments thereto, is attached hereto as Exhibit A (collectively, the "Lease"), with respect to certain real property located at [HOST SITE ADDRESS] and more particularly described in the Lease (the "Host Site"); and

WHEREAS, Assignor has entered into a certain Maine Electric Vehicle Charging Incentive Agreement with Assignee dated of even or near date herewith (the "Incentive Agreement") in connection with the operation of an electric vehicle charging station at the Host Site; and

WHEREAS, to induce Assignee to enter into the Incentive Agreement, Assignor has agreed to assign its rights under the Lease to Assignee and to secure Landlord's consent and agreement to such assignment, all on the terms set forth in this Assignment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. Assignment of Lease. Assignor hereby assigns to Assignee, its successors and assigns, all of Assignor's right, title and interest in and to the Lease, effective upon the occurrence of both of the following: (i) Assignee having given Assignor and Landlord a Notice of Intent to Assume (as that term is hereafter defined) after the occurrence of either (a) an uncured breach by Assignor under its Lease with Landlord; or (b) an uncured breach by Assignor under the Incentive Agreement; and (ii) provided that Assignee has not given Assignor and Landlord a Cancellation Notice (as that term is hereafter defined), the occurrence of the Assignment Effective Date (as that term is hereafter defined). Supplementing the foregoing, until the assignment contemplated hereby becomes effective, the rights assigned under this Assignment are reserved to and retained by Assignor.

2. Notice of Intent to Assume; Cancellation Notice; Inspections.

(a) Assignee is hereby irrevocably authorized and empowered, at Assignee's option, exercisable in Assignee's sole discretion by giving Notice to Landlord and Assignor (the "Notice of Intent to Assume") within the following time periods, to elect to take assignment of Assignor's right, title, and interest in and to the Lease, effective as of a date specified in the Notice of Intent to Assume (the "Assignment Effective Date"), which Assignment Effective Date shall not be more than forty-five (45) days after the date of the Notice of Intent to Assume, all subject to and in accordance with the terms of this Assignment:

(i) Within fifteen (15) days after Assignee receives a Termination Notice (as that term is hereafter defined) from Landlord; or

(ii) At any time after a default by Assignor under the Incentive Agreement that continues beyond applicable notice and/or cure periods set forth in the Incentive Agreement, but in no event more than fifteen (15) days after Assignee receives a Termination Notice from Landlord; or

(iii) Within fifteen (15) days after Assignee exercises its option to acquire the EV charging station equipment located at the Host Site pursuant to the Option Agreement between Assignor and Assignee of near or even date with the Incentive Agreement (the "Option Agreement").

If Assignee is given a Termination Notice, then, notwithstanding the lapse, at any time prior to the Assignment Effective Date, of any time period set forth in the Lease relating to the exercise of rights to extend the term of the Lease, Assignee shall have the right to exercise such right to extend the term of the Lease at any time prior to the Assignment Effective Date and, in such event, unless Assignee gives a Cancellation Notice, the term of the Lease shall be so extended and such extension right shall be deemed to have been timely exercised.

(b) In the event that Assignee gives a Notice of Intent to Assume, Assignee shall have the right, exercisable in Assignee's sole discretion, to revoke and cancel the Notice of Intent to Assume by giving Notice to Assignor and Landlord of Assignee's exercise of such right (a "Cancellation Notice") at any time prior to the Assignment Effective Date, in which event the Notice of Intent to Assume shall be void and all right, title, and interest under the Lease shall remain vested in Assignor.

(c) In the event that Assignee gives a Notice of Intent to Assume, then Assignee shall thereafter have the right to enter upon the Host Site and conduct such investigations, inspections, tests, sampling, and surveys as Assignee deems necessary or advisable. Assignee shall be responsible for the repair of any damage caused by Assignee's activities on the Host Site pursuant to this Section 2(c).

3. Consent of Landlord; Termination Notice; New Lease.

(a) Landlord hereby consents to the assignment of the Lease to Assignee subject to the terms and conditions set forth in this Assignment and, upon the vesting in Assignee of Assignor's right, title, and interest in and to the Lease as provided in Section 4, Landlord shall recognize Assignee as the tenant under the Lease subject to and in accordance with the provisions of this Assignment.

(b) Landlord agrees that both:

(i) prior to any termination of the Lease for any reason; and,

(ii) if the Assignor has failed to exercise any right under the Lease to extend the term of the Lease,

Landlord shall provide Notice to Assignee of the condition or facts resulting in the right to terminate the Lease or otherwise causing the termination of the Lease (including expiration thereof on account of failure to exercise such a right to extend the term of the Lease) and the fact that applicable cure rights of Assignor have expired (a "Termination Notice") and provide to Assignee the right to give Landlord and Assignor a Notice of Intent to Assume as provided in this Assignment. Landlord shall specify in the Termination Notice all monetary defaults by Assignor under the Lease, if any ("Curable Defaults").

(c) In the event that the Lease terminates for any reason prior to the expiration of the term thereof (including any extension terms provided therein) without Assignee's prior written consent or without Assignee having given a Cancellation Notice or if the Lease is rejected in a bankruptcy proceeding, then, at Assignee's election made within forty-five (45) days after Landlord is given notice of such termination, Landlord agrees to enter into a new lease with Assignee on the same terms as the Lease and for a time period equal to the period that was then remaining under the Lease (and including all options or rights to extend the term of the Lease), subject however, to such terms and conditions relative thereto as are set forth in this Assignment.

4. Assignment and Assumption.

(a) In the event that Assignee gives a Notice of Intent to Assume and has not given a Cancellation Notice prior to the Assignment Effective Date, then, effective as of the Assignment Effective

Date, all of Assignor's right, title and interest in and to the Lease shall vest in Assignee as of the Assignment Effective Date and, except as set forth in this Assignment, Assignee shall be deemed to have assumed the obligation to observe and perform the terms, conditions, covenants to be observed or performed on the part of Assignor under the Lease to the extent the obligation to observe and perform the same: (i) first arises after the Assignment Effective Date; and (ii) does not arise out of any failure by Assignor to observe or perform any of the terms, conditions, or covenants under the Lease prior to the Assignment Effective Date.

(b) In the event that Assignee gives a Notice of Intent to Assume and has not given a Cancellation Notice prior to the Assignment Effective Date, then, in addition to the obligations assumed by Assignee under Section 4(a), Assignee agrees with Landlord that Assignee will cure all Curable Defaults identified in the Termination Notice within the number of days provided for cure thereof in the Lease, measured from the Assignment Effective Date. Assignor agrees to reimburse Assignee, upon demand, for all costs and expenses incurred by Assignee under this Section 4(b). For avoidance of doubt, Assignee shall not have any obligation to cure any defaults by Assignor under the Lease that are not Curable Defaults identified in the Termination Notice.

5. Additional Provisions.

(a) Landlord shall provide Notice to Assignee of any default by Assignor under the Lease at the same time that Notice is provided to Assignor and, in the event that Assignor fails to cure such default within the time period provided in the Lease, Landlord shall give Assignee Notice of such failure and shall permit Assignee the right, at Assignee's option and without assuming the Lease or waiving its right to assume the Lease, to cure any such default with a period of ten (10) days, measured from the date of such Notice to Assignee that Assignor has not cured the default (or, if the default is not reasonably capable of being cured within said ten (10) day period, then such longer period as is reasonably necessary to effectuate cure, provided that cure is commenced within said ten (10) day period to the extent possible and thereafter diligently prosecuted to completion). Assignee's failure to cure any such defaults under this Section 5(a) shall not impair or prejudice Assignee's rights under this Assignment, including the right to give a Notice of Intent to Assume and the obligation to cure after the Assignment Effective Date the Curable Defaults identified in the Termination Notice.

(b) Assignor will not, without Assignee's written consent, which may be withheld in Assignee's sole discretion: (i) assign Assignor's rights under or interest in the Lease to any person or otherwise transfer or encumber Assignor's right, title, or interest in or to the Lease, including through any leasehold mortgage or (ii) surrender or terminate the Lease. Landlord will not consent or agree to any actions that are prohibited pursuant to this sub-section 5(b) without the written consent of Assignee, which may be withheld in Assignee's sole discretion.

6. Limitation on Obligations of Assignee. Except as provided in Section 4, this Assignment shall not operate to place upon Assignee any responsibility for, and Assignor and Landlord agree that, except as aforesaid, Assignee shall not have any responsibility for: (a) the control, care, operation, management, maintenance, or repair of, the Host Site; (b) the observance or performance of any of the terms, conditions, covenants to be observed or performed by the tenant under the Lease; (c) any condition with respect to the Host Site; (d) any negligence or other breach of duty (whether under common law, statute, or agreement, including the Lease) with respect to activities at the Host Site; or (e) the compliance of the Host Site with applicable laws, ordinances, rules, or regulations.

7. Termination. Provided that Assignor's right, title, and interest in and to the Lease has not vested in Assignee as provided in this Assignment, then, upon full performance and satisfaction of all of Assignor's obligations under and the expiration (without renewal or extension) of the Incentive Agreement and the Option Agreement, this Assignment shall terminate. This Assignment shall also terminate if Landlord gives Assignee a Termination Notice and either (a) Assignee fails to give a Notice of Intent to Assume within the required time period; or (b) Assignee gives a Notice of Intent to Assume and thereafter gives a Cancellation Notice.

8. Notice. All notices (each a "Notice") required to be sent under the provisions of this Assignment to Landlord, Assignee or Assignor shall be in writing and shall be deemed properly given if: (i) delivered personally with receipt acknowledged in writing; (ii) sent by overnight courier service such as FedEx or UPS; or (iii) sent by certified mail, return receipt requested. Notices shall be directed to the parties at their respective addresses as set forth in the preamble to this Agreement or to such other address(es) as a party may designate by Notice. All Notices shall be deemed given on the day when actually delivered (if delivered personally) or on the day the same is sent (if given by overnight courier service or by certified mail, return receipt requested).

9. Further Assurances; Recording. No further instrument of assignment from Assignor or consent from Landlord shall be required to vest in Assignee all of Assignor's right, title, and interest in and to the Lease as provided herein. Notwithstanding the foregoing, Landlord and Assignor agree to execute such further instruments as may be reasonably requested by Assignee to more fully perfect and/or confirm the assignment of the Lease to Assignee and as may be requested by Assignee if Assignee gives a Notice of Intent to Assume that is not canceled by a Cancellation Notice. Assignee may record a Notice of Conditional Assignment of Lease in the registry or such other recording offices as Assignee deems appropriate.

10. Miscellaneous. This Assignment shall bind and is for the benefit of all parties and their successors and assigns (but the foregoing shall not be construed to permit any assignment by Assignor). Assignee shall have the right to assign this Assignment. This Assignment constitutes the entire agreement of the parties with respect to the assignment and assumption of the Lease. This Assignment may not be modified or amended except by an instrument in writing executed by Assignor, Landlord, and Assignee. This Assignment shall be construed in accordance with the laws of the State of Maine, without regard or reference to its conflicts of law provisions, and any proceedings relating to this Assignment shall be brought in the state or federal courts located in the State of Maine. Any time period set forth or calculated under this Agreement which expires on a Saturday, Sunday, or statutory holiday in the State of Maine shall be automatically extended to the next day that is not a Saturday, Sunday, or statutory holiday in such location. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections contained in this Assignment shall not affect the validity or enforceability of the remaining portions of this Assignment or any part thereof. This Assignment may be executed in multiple counterparts, each of which shall be constitute an original, and all of which, taken together, shall constitute a single instrument.

IN WITNESS WHEREOF, Assignor, Landlord, and Assignee have caused this instrument to be executed by their duly authorized representatives as of the date given above.

ASSIGNOR:
XXXXXX.

By: _____

LANDLORD:
[LANDLORD NAME]

By: _____

Printed Name: _____

Its: _____

ASSIGNEE:
EFFICIENCY MAINE TRUST

By: _____

Printed Name: _____

Its: _____

RIDER F**OPTION AGREEMENT**

THIS OPTION AGREEMENT (this "Agreement") is entered into on this ____ day of _____, 2021 by and between _____, a _____ corporation with a mailing address of _____ ("Grantor"), and **EFFICIENCY MAINE TRUST**, an independent quasi-state agency of the State of Maine with a mailing address of: Attn: Executive Director, 168 Capitol Street, Suite 1, Augusta, Maine 04330-6856 ("Grantee").

WHEREAS, Grantee and Grantor are parties to a Maine Electric Vehicle Charging Incentive Agreement dated on or about _____, 2021 (the "Incentive Agreement"), pursuant to which Grantee has provided an award of public funds to Grantor for the purpose of establishing and operating certain electric vehicle chargers (the "EV Chargers") at one or more sites in the State of Maine (the "Host Sites"), including Grantor's acquisition, installation and maintenance of all necessary EV charging equipment and related infrastructure (the "EV Charging Equipment"); and

WHEREAS, in order to induce Grantee to enter into the Incentive Agreement, Grantor has agreed to grant to Grantee certain rights to acquire the EV Charging Equipment as set forth in this Agreement.

NOW, THEREFORE, the parties, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby agree as follows:

ARTICLE I
TERMS OF OPTION

1.1 **Grant of Option.** Subject to the terms of this Agreement, Grantor hereby GRANTS to Grantee the exclusive right and option to purchase the EV Charging Equipment (as that term is defined in Section 1.2 of this Agreement) (the "Option").

1.2 **Property Description.** The property that is the subject of the Option is as follows:

- (a) All EV Charging Equipment at each Host Site as more fully described in **Exhibit A** attached hereto and made a part hereof (the "Equipment");
- (b) all improvements and fixtures now located or hereafter constructed or installed on or in connection with the EV Charging Equipment (the "Improvements"); and
- (c) to the extent Grantee elects to acquire the same and to the extent the same are assignable, all permits, licenses, consents, approvals, and authorizations held in connection with the ownership, use, or operation of the Equipment and/or the Improvements, or occupancy of the Host Site (the "Licenses"),

(all of the foregoing being hereinafter collectively referred to as the "Property").

1.3 **Conditions of Exercise.** Grantee shall have the right to exercise the Option at any time upon and after the termination or expiration of the Incentive Agreement, as set forth therein, if (i) Grantor ceases continuous, uninterrupted operation of an EV Charging Station at a Host Site at any time within the three-year period following the date of termination or expiration of the Incentive Agreement (the "Option Period"); (ii) Grantor transfers its rights in the Equipment or Improvements, whether voluntarily or involuntarily, during the Option Period; (iii) there is a dissolution, termination of existence, insolvency, or business failure of Grantor, appointment of a receiver for any part of the Grantor's property, assignment for the benefit of creditors by Grantor, or the commencement of any proceeding under a bankruptcy or insolvency law by or against Grantor during the Option Period; (iv) Grantor transfers, sells or assigns all or substantially all of its assets during the Option Period; (v) Grantor undergoes a change of control or merger

or consolidation during the Option Period such that the current owners of Grantor as of the date of this Agreement no longer own or control more than 50% of the voting stock in Grantor; or (vi) Grantor is otherwise in default of the Security Agreement between Grantor and Grantee of near or even date with this Agreement. Grantee shall have an independent right to exercise its Option to acquire the Property at each EV Charging Station Host Site upon the occurrence of the condition of exercise set forth herein at each Host Site. Grantee's Option shall expire on the date that is three years from the date of termination or expiration of the Incentive Agreement (the "Expiration Date").

1.4 Notice of Cessation; Notice of Exercise; Expiration Date. If, during the Option Period, Grantor intends to cease continuous, uninterrupted operation of an EV Charging Station at a Host Site, Grantor shall give Grantee written notice at least thirty (30) days prior to the cessation of operations at such Host Site. The Grantee may exercise the Option to acquire Property at the Host Site identified in Grantor's notice by giving Grantor written notice of exercise within thirty (30) days of Grantee's receipt of Grantor's notice of intent to discontinue operations. The Grantee's Option shall expire with regard to the Property at the Host Site identified in Grantor's notice at the end of the thirty-fifth (35th) day following receipt (the "Expiration Date").

1.5 Effect of Exercise. Upon timely exercise of the Option, the parties shall be bound by the provisions set forth in Article II of this Agreement.

1.6 Failure to Exercise Before Expiration of Option. If Grantee has not given to Grantor written notice of exercise at or before 11:59 p.m. on the Expiration Date for any reason other than Grantor's breach of this Agreement, the Option as to the Property located at the Host Site identified in Grantor's notice of intent shall expire, Grantee shall no longer have the right to purchase such Property pursuant to this Agreement, and neither party shall be bound by the provisions set forth in Article II of this Agreement as to such Property at such Host Site. For the avoidance of doubt, expiration of Grantee's Option to acquire Property at any one Host Site does not affect Grantee's Option to acquire Property at any other Host Site.

ARTICLE II TERMS OF PURCHASE AND SALE

2.1 Purchase and Sale. Upon timely exercise of the Option in accordance with Article I of this Agreement, Grantor agrees to sell and Grantee agrees to purchase the Property, all in accordance with and subject to the provisions of this Agreement.

2.2 Bill of Sale; Other Instruments of Conveyance.

(a) All Property that constitutes equipment, goods, fixtures, or tangible personal property shall be conveyed by a good and sufficient warranty bill of sale (the "Bill of Sale") conveying to Grantee (or its assignee or designee) good title to the Property, free and clear of all liens and encumbrances. Grantor shall be obligated to convey the Property free and clear of all security interests, mortgages and other monetary liens.

(b) All Licenses that Grantee elects to acquire shall be conveyed by a suitable and enforceable transfer and assignment instrument running to Grantee (or its assignee or designee) and said assignment instrument shall effectively transfer the Licenses to Grantee (or its assignee or designee).

2.3 Purchase Price. The purchase price for the Property shall be Grantor's actual acquisition cost, less depreciation for tax purposes as shown on Grantor's books as of the date of Grantee's notice of exercise, less the amount of the Incentive Award paid by Grantee to Grantor attributable to acquisition of the Property by Grantor, but in no event less than \$10 (the "Purchase Price"). Grantee shall pay Grantor a deposit of \$10 within fifteen (15) days of the date Grantee gives Grantor notice of exercise of the Option (the "Deposit"), with the balance, if any, due and payable at the Closing, as defined below.

2.4 Closing. If the Option is exercised, the Bill of Sale and the other instruments of conveyance and other closing documents reasonably necessary to consummate the transaction contemplated by this

Agreement are to be delivered and the Purchase Price paid at the offices of Grantee in Augusta, Maine on or prior to the date that is thirty (30) days after the date Grantee gives Grantor notice of exercise of the Option, unless otherwise mutually agreed (the "Closing").

2.5 Possession; Condition. Full right, title, and possession of the Property is to be delivered at the Closing. Grantor shall deliver the Equipment in good, safe, and operable condition. The Grantee may, but shall not be obligated to, inspect the Property prior to Closing in order to determine whether the condition thereof complies with the terms of this Agreement.

2.6. Extension to Make Property Conform. If Grantor shall be unable to give title or to make conveyance, or to deliver possession of the Property all as herein stipulated, or if, at the time of Closing the Property does not conform with the provisions hereof, then the Grantor shall use diligent efforts to give title and deliver possession as provided herein, and to make the Property conform to the provisions hereof, as the case may be, in which event the time for performance hereof shall be extended for a period of thirty (30) days.

2.7 Failure to Make Property Conform. If at the expiration of any extended time for performance Grantor shall have failed to give title or deliver possession as provided herein, or make the Property conform to the provisions hereof, as the case may be, all as herein agreed, then Grantee may, without limiting the remedies available to Grantee for breach of this Agreement, elect to terminate this Agreement by delivering written notice to Grantor.

2.8 Grantee's Election to Accept Title and Condition. Grantee shall have the election, at either the original or any extended time for performance, to accept such title to the Property in such condition as Grantor can deliver, and to pay therefor the Purchase Price without deduction, in which case Grantor shall convey such title or deliver the Property in such condition.

ARTICLE III MISCELLANEOUS

3.1 Default. If Grantee exercises the Option and defaults in its obligation to purchase the Property as provided in this Agreement, Grantor's sole and exclusive remedy shall be to retain the Deposit as full and complete liquidated damages.

3.2 Representation of Title. Grantor hereby agrees that, from and after the date hereof, Grantor will not allow any change in the condition of the Property to occur, other than those contemplated hereby, and will not, without in each instance first obtaining the written consent of the Grantee grant, create, assume or permit to exist any lien, lease, encumbrance, easement, covenant, condition, or restriction on or otherwise affecting the Property that will not be fully discharged, released, or terminated at or prior to Closing and shall not otherwise take any action adversely affecting the title to the Property as it exists on the date of this Agreement.

3.4 Additional Terms.

(a) This Agreement shall be binding upon and inure to the benefit of Grantor and Grantee and their respective successors and assigns. Grantee shall have the right to assign this Agreement and/or to designate a person to receive any conveyance of the Property pursuant to the terms of this Agreement.

(b) Grantor acknowledges that the EV Charging Equipment is subject to a Security Agreement between Grantor and Grantee of near or even date herewith securing, in part, Grantor's obligations under this Option Agreement.

(c) All notices pursuant to this Agreement, to be effective, shall be in writing and shall be (i) hand delivered; or (ii) mailed by certified mail, postage prepaid, return receipt requested; or (iii) sent by overnight courier, in any of such cases to the address set forth in the preamble or to such other

address(es) as a party may designate by notice. Any notice given in accordance with this paragraph shall be deemed given when delivered to such address if hand delivered, or when deposited with the United States Postal Service or with the courier service if sent by mail or by overnight courier as provided herein. Nothing in this paragraph shall be construed to invalidate any written notice given in any other manner if such written notice is actually received by the party to receive such notice.

(d) This Agreement shall be governed by and construed in accordance with the laws of the State of Maine without regard or reference to its conflicts of law provisions.

(e) Grantor agrees to execute, acknowledge and deliver a Memorandum of Option or other informational filing as may be requested by Grantee for purposes of recording public notice of the Option.

(f) This Agreement may not be modified, waived or amended except in a writing signed by the parties hereto. No waiver of a breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce its rights in respect of such a breach, and no such waiver shall be construed as a waiver of any subsequent breach. No course of dealing or delay or omission on the part of any party in exercising any right or remedy shall operate as a waiver thereof or otherwise be prejudicial thereto.

(g) Any and all prior and contemporaneous discussions, undertakings, agreements and understandings of the parties with respect to the Option granted herein are merged in this Agreement, which alone fully and completely expresses their entire agreement.

(h) This Agreement shall become effective only after both Grantor and Grantee have executed and delivered this Agreement. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which, taken together, shall constitute a single instrument

(i) If the last day upon which performance would otherwise be required or permitted under this Agreement is or if any deadline under this Agreement falls on a Saturday, Sunday, or statutory holiday in the State of Maine, then the time for performance shall be extended to the next day which is not a Saturday, Sunday or statutory holiday in such location.