

**SAMPLE: EMT STANDARD CONTRACT FOR EV CHARGING INCENTIVES**

Contract No. [REDACTED]

**EFFICIENCY MAINE TRUST**

**MAINE ELECTRIC VEHICLE CHARGING  
INCENTIVE AGREEMENT**

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

WHEREAS, the Trust is the administrator of certain funds allotted to the Maine Department of Transportation (MaineDOT) from the National EV Infrastructure (NEVI) Formula program, which uses resources from the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (BIL) to develop EV charging infrastructure pursuant to the Memorandum of Agreement, effective January 20, 2023 between the Trust, the MaineDOT, and the Governor’s Energy Office;

WHEREAS, the Trust issued a Request for Proposals for DC Fast Charging Stations – Maine Phase 5 (RFP EM 011-2023) (the “RFP”) seeking proposals for the development and operation of public, universal DC “fast chargers” (DCFC) to serve electric vehicles (EV) along a certain segment of coastal Route 1 and to add charging capacity in the target areas of Augusta and Bangor;

WHEREAS, in response to the RFP, Recipient submitted a proposal dated [REDACTED], 20XX, (“Recipient’s Response to RFP”) proposing to secure one or more 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 (the “Incentive Award”) to Recipient under the Program for implementation of the Project, 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; and,

WHEREAS, Recipient acknowledges that the Project to be performed and materials to be provided under this Agreement will be paid by and through the Trust using funds from the federal National EV Infrastructure (NEVI) Formula program, an initiative authorized by the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (BIL), and Recipient further acknowledges that its receipt of federal funds will require it to comply with certain federal laws and abide by certain contract provisions required in connection with the receipt of federal awards.

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.

- 1.2 Recipient will perform the Project Services in accordance with the terms of this Agreement, including the General Terms and Conditions set forth in Rider C and the Contract Provisions for Non-Federal Entity Contracts under Federal Awards set forth in Rider C-1.

## 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 EV Chargers at the Host Site (as defined herein) are commissioned and placed into service, after which period this Agreement shall expire (the "Term"). If the SOW provides for the development of more than one Host Site, then the period of five (5) years shall commence after the last EV Charger among all of the site locations listed in Table 1 of Rider A is commissioned and placed into service. This Agreement may be terminated before the end of the Term in accordance with the provisions of this Agreement or may be 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 comprising two parts. The first part is the Capital Incentive and the second part is the Demand Charge Incentive.

a. The amount of the **Capital Incentive** to be paid by the Trust, on a reimbursement basis, will be the lesser of (i) the EMT Grant Funds Requested in the Response in the amount of **\$XXXXXX** or (ii) 80% of the eligible costs (excluding utility demand charges) actually incurred as documented in receipts and paid invoices, net of expected federal tax credits and any federal, state, or private grants.

b. The amount of the **Demand Charge Incentive** to be paid by the Trust, on a reimbursement basis, will be the lesser of (i) 20% of actual electric utility demand charges incurred and paid for the DCFC awarded at each Charging Site, or (ii) **\$96,000**, net of any Service Credit applied by the Trust pursuant to the Service Level Agreement (SLA) prescribed in Rider B.

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. Failure to comply with these terms will constitute an Event of Default that may result in recoupment of funds, debarment from further contracting with the Trust, and the exercise by the Trust of all rights and remedies available under contract and at law or equity.

**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, construction or operation 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 or more 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 or by the federal government.

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 equipment, improvements, and permits and licenses associated with the Project at a Host Site for a specified period upon the occurrence during the Term of this Agreement of certain conditions, including but not limited to the Recipient's uncured breach, insolvency or dissolution.

## 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 C-1 – Federal EV Funds Contract Requirements
- Rider D – Security Agreement
- Rider E – Conditional Assignment
- Rider F – Option Agreement

Recipient's Response to the 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-1 -- Federal EV Funds Contract Requirements
4. Rider C – General Terms and Conditions
5. Rider B – Payment Schedule;
6. Efficiency Maine Trust Request for Proposals for DC Fast Charging Stations – Maine Phase 5 (RFP EM 011-2023);
7. Rider D – Security Agreement
8. Rider E – Conditional Assignment
9. Rider F – Option Agreement; and
10. Recipient's Response to RFP, dated [REDACTED], 20XX.

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

Name: Amalia Siegel  
Title: Program Manager, Electric Vehicle Initiatives  
Efficiency Maine Trust  
Address: 168 Capitol Street, Suite 1  
Augusta, Maine 04330-6856  
Telephone: (207) 553-3045  
E-mail: Amalia.Siegel@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: \_\_\_\_\_

Attachments: Rider A (Statement of Work); Rider B (Payment Schedule); Rider C (General Terms and Conditions); Rider C-1 (Federal EV Funds Contract Requirements); Rider D (Security Agreement); Rider E (Conditional Assignment); Rider F (Option Agreement)

**RIDER A**

**STATEMENT OF WORK, SPECIFICATIONS AND PROJECT DESCRIPTION**

The Recipient shall fully execute all work and services described in this Statement of Work (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 includes 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 charging port’s hardware or software are not online and available for use, or the charging port does not successfully dispense electricity as expected. Downtime does not include outages for reasons outside the charging station operator’s control, such as electric utility service interruptions, internet or cellular service provider interruptions and outages caused by the vehicles, provided that the Charging Station Operator can demonstrate that the charging port would otherwise be operational.
- Uptime: Refers to a period of time when a charging port’s hardware and software are both online and available for use, or in use, and the charging port successfully dispenses electricity as expected.

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 location(s) 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 Site(s) 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 Location(s):

XXXX

Table 1 - Deployment

	Site Location	Deadline for Commissioning
1	XXX	XX
2	(Add additional sites as needed, per awarded proposal)	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 for the EV Chargers awarded pursuant to the RFP and Recipient's Response:

**A. Install EV Charging Sites and Chargers.**

1. Installation: The Recipient is responsible for achieving completed installations at each EV Charging Site, to include
  - a. Obtain all applicable local, state, and federal permits required for installation and operation of the EV chargers;
  - b. Ensure that the workforce installing, maintaining, and operating chargers meet the following standards as required by Section 680.106(j) of the NEVI Standards:
    - i. Except as provided in paragraph (b)(2) of this section, all electricians installing, operating, or maintaining EVSE must meet one of the following requirements:
      1. Certification from the EVITP.
      2. Graduation or a continuing education certificate from a registered apprenticeship program for electricians that includes charger-specific training and is developed as a part of a national guideline standard approved by the Department of Labor in consultation with the Department of Transportation.
    - ii. For projects requiring more than one electrician, at least one electrician must meet the requirements above, and at least one electrician must be enrolled in an electrical registered apprenticeship program.
    - iii. All other onsite, non-electrical workers directly involved in the installation, operation, and maintenance of chargers must have graduated from a registered apprenticeship program or have appropriate licenses, certifications, and training as required by the State.
  - c. Ensure that all installation work as it pertains to site preparation, curbing, striping, signage, charging equipment, billing and networking systems, and electrical interconnections is installed:
    - i. consistent with the manufacturers' specifications;
    - ii. consistent with the project design and specifications proposed in the bid;
    - iii. in accordance with all applicable local, state and federal zoning and code requirements; and
    - iv. is working properly;
  - d. Coordinate the installation activities with the equipment manufacturer, host site, networking service, electric utility, and any sub-contractors needed to complete the work.

**2. Charging Equipment Requirements –**

The charging equipment that is subject to a financial incentive through this RFP must:

- a. Be new, and unused (not refurbished or remanufactured);
- b. Meet the following minimum specifications:
  - i. Not less than four (4) and not more than eight (8) DCFC ports per site;
  - ii. Each port must be able to serve EVs using the CCS standard;
    1. Optionally, one (1) port may also be able to serve EVs using the CHAdeMO standard;
  - iii. Each site must be able to supply power according to an EV's power delivery request up to at least 150kW to four (4) vehicles simultaneously.

- c. Include all cables, connectors, interfaces, documentation for all components, and any other items necessary for full operation;
  - d. Be factory calibrated (as applicable) prior to, or during installation, in accordance with the Original Equipment Manufacturer (OEM) standards;
  - e. Include all standard manufacturer accessories;
  - f. Use the most current software version available as of the time it is installed;
  - g. Have 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. Be certified by the Underwriters Laboratories, Inc. (UL), or another Occupational Safety and Health Administration Nationally Recognized Testing Laboratory to the appropriate Underwriters Laboratories (UL) standards for EV charging system equipment;
  - i. Be 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. Include barriers or other configuration to prevent damage from equipment used for snow removal;
  - k. Include 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. Be tamper-proof and deter vandalism;
  - m. Incorporate a cord management system or method to minimize the potential for cable entanglement, user injury, or connector damage from lying on the ground, and comply with NEC articles 625 as it applies to cord management systems; and
  - n. Comply with all National Electrical Code and Federal Communications Commission regulations for safety and operation requirements.
3. Interoperability of Electric Vehicle Charging Infrastructure –
- a. **Charger-to-EV Communication.** Chargers must conform to ISO 15118-3 and must have hardware capable of implementing both ISO 15118-2 and ISO 15118-20. By February 28, 2024, charger software must conform to ISO 15118-2 and be capable of Plug and Charge. Conformance testing for charger software and hardware should follow ISO 15118-4 and ISO 15118-5, respectively.
  - b. **Charger-to-Charger-Network Communication.** Chargers must conform to Open Charge Point Protocol (OCPP) 1.6J or higher. By February 28, 2024, chargers must conform to OCPP 2.0.1.
  - c. **Charging-Network-to-Charging-Network Communication.** By February 28, 2024, charging networks must be capable of communicating with other charging networks in accordance with Open Charge Point Interface (OCPI) 2.2.1.
  - d. **Network Switching Capability.** Chargers must be designed to securely switch charging network providers without any changes to hardware.
4. Charging Network Connectivity of Electric Vehicle Charging Infrastructure –
- a. **Charger-to-Charger-Network Communication.**
    - i. Chargers must communicate with a charging network via a secure communication method. See Section 680.108 of the NEVI Standards for more information about OCPP requirements.
    - 2. Chargers must have the ability to receive and implement secure, remote software updates and conduct real-time protocol translation, encryption and decryption, authentication, and authorization in their communication with charging networks.
    - 3. Charging networks must perform and chargers must support remote charger monitoring, diagnostics, control, and smart charge management.
    - 4. Chargers and charging networks must securely measure, communicate, store, and report energy and power dispensed, real-time charging-port status, real-time price to the customer, and historical charging-port uptime.

- b. Interoperability. See Section 680.108 of the NEVI Standards for interoperability requirements.
- c. Charging-Network-to-Charging-Network Communication. A charging network must be capable of communicating with other charging networks to enable an EV driver to use a single method of identification to charge at Charging Stations that are a part of multiple charging networks. See Section 680.108 of the NEVI Standards for more information about OCPI requirements.
- d. Charging-Network-to-Grid Communication. Charging networks must be capable of secure communication with electric utilities, other energy providers, or local energy management systems.
- e. Disrupted Network Connectivity. Chargers must remain functional if communication with the charging network is temporarily disrupted, such that they initiate and complete charging sessions, providing the minimum required power level defined in Section 680.106(d) of the NEVI Standards.

#### 5. Data Capture Requirements –

Each EV charger must have network communications that, at a minimum, provide the following information:

- a. Date and time of each charging session (start and stop time);
- b. Total kWh dispensed and maximum kW demand for each session;
- c. Total dollar amount charged to the user for each session;
- d. Charger status and health in real time;
- e. Malfunction or operating error;
- f. Full site level demand; and
- g. For projects that employ battery energy storage systems (BESS), BESS state of charge before and after each vehicle charging session and time to charge and discharge.

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.

#### 6. Payment Methods –

Each charger must:

- a. Provide for secure payment methods, accessible to persons with disabilities, which at a minimum shall include a contactless payment method that accepts major debit and credit cards, and either an automated toll-free phone number or a short message/messaging system (SMS) that provides the EV charging customer with the option to initiate a charging session and submit payment;
- b. Not require a membership for use;
- c. Not delay, limit, or curtail power flow to vehicles on the basis of payment method or membership; and
- d. Provide access for users that are limited English proficient and accessibility for people with disabilities. Automated toll-free phone numbers and SMS payment options must clearly identify payment access for these populations.

#### 7. Communication of Price –

- a. The price for charging must be displayed on the charging unit prior to initiating a charging transaction and be based on the price for electricity to charge in \$/kWh.
- b. The price for charging displayed and communicated via the charging network must be the real-time price (i.e., price at that moment in time). The price that is offered at the start of the session cannot be changed during the session.
- c. Price structure including any other fees in addition to the price for electricity to charge must be clearly displayed and explained.
- d. The chargers must have a point-of-sale and supporting network that is compatible with other public networks in Maine and, to the greatest extent practicable, employs roaming

agreements providing compatibility with systems most commonly used in adjacent jurisdictions, including the Electric Circuit used in Quebec; and

- e. For the first five years of the contract, the chargers must charge a rate or fee to the customer for each charging event equal to the starting rate proposed in the Recipient's bid, provided that the Recipient may increase the rate or fee during this five-year period by not more than the Consumer Price Index, as measured using the online CPI Inflation Calculator published by the US Bureau of Labor Statistics, for the period since the last time the rate or fee was increased.<sup>1</sup>
8. Customer Data Privacy –
- a. Charging station operators must collect, process, and retain only that personal information strictly necessary to provide the charging service to a consumer, including information to complete the charging transaction and to provide the location of charging stations to the consumer. Chargers and charging networks should be compliant with appropriate Payment Card Industry Data Security Standards (PCI DSS) for the processing, transmission, and storage of cardholder data. Charging Station Operators must also take reasonable measures to safeguard consumer data.
9. Traffic Control Devices or On-Premises Signs Acquired, Installed, or Operated –
- a. General Requirements: Signage must comply with all applicable local, state, and/or federal laws, ordinances, regulations, and standards; and
  - b. On-Site: Signage and other traffic control devices for each Host Site must clearly identify to an approaching driver from any ingress, that the Host Site has an EV Charger(s) and the location(s) of the EV Charger(s). On-site signage should indicate that parking spaces associated with the chargers are reserved for electric vehicles only.
  - c. The Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) found at 23 CFR part 655 and the Highway Beautification regulation at 23 CFR part 750 address requirements about traffic control devices and on-premise signs.
    - i. Manual on Uniform Traffic Control Devices for Streets and Highways. All traffic control devices must comply with part 655 of this subchapter.
    - ii. On-Premises Signs. On-property or on-premise advertising signs must comply with part 750 of this chapter.
10. Requirements for Accessibility and Availability –  
The chargers awarded through this RFP must:
- a. Be available to the public 24 hours per day, seven (7) days a week, year-round;
  - b. Be accessible from a paved or hardscaped parking space that is clearly marked to designate the spaces as reserved for EV Charger parking, where the number of parking spaces reserved for EVs, within reach of the DCFC, is equal to the maximum number of EVs that can be charged simultaneously from chargers awarded pursuant to the RFP;
  - c. Have dusk-to-dawn area lighting;
  - d. Be accessible to persons with disabilities, which will be satisfied if at least one of the parking spaces meets ADA requirements and is accessible according to U.S. Access Board Design Recommendations for Accessible Electric Vehicle Charging Stations (it will not be necessary for the ADA spaces to be ADA reserved);<sup>2</sup> and
  - e. For eligible segments #1 and #2, include at least one pull-through lane for charging medium/heavy duty vehicles and vehicles towing trailers (for eligible segment #3, including a pull-through lane is preferred but not required); and
  - f. Provide appropriate safety instructions for EV drivers regarding the proper use of the charging equipment.
11. Third-Party Data Sharing –

<sup>1</sup> [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm)

<sup>2</sup> <https://www.access-board.gov/tad/ev/>

As required by the NEVI Standards § 680.116, recipients must ensure that the following data fields are made available, free of charge, to third-party software developers, via application programming interface:

- a. Unique charging station name or identifier;
- b. Address (street address, city, State, and zip code) of the property where the charging station is located;
- c. Geographic coordinates in decimal degrees of exact charging station location;
- d. Charging station operator name;
- e. Charging network provider name;
- f. Charging station status (operational, under construction, planned, or decommissioned);
- g. Charging station access information:
  - i. Charging station access type (public or limited to commercial vehicles);
  - ii. Charging station access days/times (hours of operation for the charging station);
- a. Charging port information:
  - i. Number of charging ports;
  - ii. Unique port identifier;
  - iii. Connector types available by port;
  - iv. Charging level by port (DCFC, AC Level 2, etc.);
  - v. Power delivery rating in kilowatts by port;
  - vi. Accessibility by vehicle with trailer (pull-through stall) by port (yes/no);
  - vii. Real-time status by port in terms defined by Open Charge Point Interface 2.2.1;
- a. Pricing and payment information:
- b. Pricing structure:
  - i. Real-time price to charge at each charging port, in terms defined by Open Charge Point Interface 2.2.1; and
  - ii. Payment methods accepted at charging station.

## **B. Provide Ongoing Operation and Maintenance and Customer Service Support**

### **1. Operation and Maintenance –**

The Recipient must:

- a. Operate and maintain each EV Charger for at least five (5) years from the date the EV charger developed under this RFP becomes fully operational, in accordance with the terms of the contract resulting from this RFP;
- b. Be responsible for ensuring the maintenance of the chargers including cables, ancillary equipment, and any awnings, canopies, shelters and information display kiosks for signage associated with the charger. “Maintain” as used in this RFP shall mean “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;”
- c. Minimum Uptime. Recipients must ensure that each charging port has an average annual uptime of greater than 97%.
  1. A charging port is considered “up” when its hardware and software are both online and available for use, or in use, and the charging port successfully dispenses electricity in accordance with requirements for minimum power level (see Section 680.106(d) of the NEVI Standards).
  2. Charging port uptime must be calculated on a monthly basis for the previous 12 months using the methodology described in Section 680.116(b) of the NEVI Standards.
- d. In addition to the minimum uptime requirement defined above, the Recipient must ensure that downtime for each individual charging port does not exceed 72 consecutive hours. It is the Recipient’s responsibility to ensure the 97% uptime requirement is met for each individual charging port and that interruptions are remedied within 72 hours. For any interruption in service to any DCFC that has lasted or is expected to last more than four (4) hours:
  - i. Notify appropriate information sources including, but not limited to, website

- and application hosts, as appropriate so drivers are aware of the interruption;  
and
  - ii. Inform the Trust via email within one business day to give the Trust notice of the event and when it started and to explain the cause of the interruption and the plan for and estimated time needed to restore service;
  - e. Provide for snow removal plan to ensure access during and after inclement weather;
  - f. List the EV chargers on PlugShare.com and the Alternative Fuels Data Center Electric Vehicle Charging Station  
Locator: [https://afdc.energy.gov/fuels/electricity\\_locations.html#/find/nearest?fuel=ELEC](https://afdc.energy.gov/fuels/electricity_locations.html#/find/nearest?fuel=ELEC) ;
  - g. **Not**, during the term of the contract, move an EV charger to another host site location, sell or permanently take an EV charger out of service at a given site for any reason, without **prior written approval** from the Trust.
2. Customer Support Services –
- a. Recipients must ensure that EV charging customers have mechanisms to report outages, malfunctions, and other issues with charging infrastructure. Charging station operators must enable access to accessible platforms that provide multilingual services. Recipients must comply with the American with Disabilities Act of 1990 requirements and multilingual access when creating reporting mechanisms.
  - b. 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.
  - c. Provide customer support for the duration of the contract, with the ability to provide customer support/or extend after the completion of the contract.
  - d. Resolve customer issues over the telephone.

### C. Manage Host Site Relationship

1. 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

Without limiting any additional data collection and reporting as specified in Section 4 “Statement of Work” of Recipient’s Response to RFP, Recipient shall provide the following reporting to the Trust:

1. Construction updates. 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.
2. Ad hoc operations reports. 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.
3. Periodic status reports. 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:
  1. **Maintenance reports** detailing Charging Site and Charger status, maintenance dispatches, service and repair response time, station Uptime, and any other notable events.
  2. **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.
4. Operational reports - Recipient must collect and report the following data to the Trust at the frequencies listed below. These data capture and reporting requirements are based on those in the NEVI Standards and Requirements (23 CFR 680) at § 680.112 and § 680.116(c).
  - a. **Quarterly Data submittal.** Recipients must submit the following data on a quarterly basis for each individual port:
    - i. Charging station identifier that the following data can be associated with. This must be the same charging station name or identifier used to identify the charging station in data made available to third-parties in § 680.116(c)(1) of the NEVI Standards (see Third Party Data Sharing below);
    - ii. Charging port identifier. This must be the same charging port identifier used to identify the charging port in data made available to third-parties in § 680.116(c)(8)(ii);
    - iii. Charging session start time, end time, and any error codes associated with an unsuccessful charging session by port;
    - iv. Energy (kWh) dispensed to the EV per charging session by port;
    - v. Peak session power (kW) by port;
    - vi. Payment method associated with each charging session;
    - vii. Charging station port uptime, T<sub>outage</sub>, and T<sub>excluded</sub> calculated in accordance with the equation in § 680.116(b) of the NEVI Standards for each of the previous 3 months;
    - viii. Duration (minutes) of each outage

In addition to the above listed data, Recipient should report to the Trust quarterly:

- i. The amount billed to each customer for each transaction; and

- ii. For projects that employ battery energy storage systems (BESS), BESS state of charge before and after each vehicle charging session and time to charge and discharge.
  - b. **Annual Data Submittal.** Beginning in 2024, Recipients must submit the following data on an annual basis, on or before March 1:
    - i. Maintenance and repair cost per charging station for the previous year.
    - ii. For private entities involved in the operation and maintenance of chargers, identification of and participation in any State or local business opportunity certification programs including but not limited to minority-owned businesses, Veteran-owned businesses, woman-owned businesses, and businesses owned by economically disadvantaged individuals.
  - c. **One-time Data Submittal.** Beginning in 2024, Recipients must submit the following data once for each charging station, on or before March 1 of each year:
    - i. The name and address of the private entity(ies) involved in the operation and maintenance of chargers.
    - ii. Distributed energy resource installed capacity, in kW or kWh as appropriate, of asset by type (e.g., stationary battery, solar, etc.) per charging station; and
    - iii. Charging station real property acquisition cost, charging equipment acquisition and installation cost, and distributed energy resource acquisition and installation cost;
    - iv. Aggregate grid connection and upgrade costs paid to the electric utility as part of the project, separated into:
      - (1) Total distribution and system costs, such as extensions to overhead/underground lines, and upgrades from single-phase to three-phase lines; and
      - (2) Total service costs, such as the cost of including poles, transformers, meters, and on-service connection equipment.
- 5. **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.
- 6. 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. [REDACTED]

**Capital Incentive**

Up to \$ [REDACTED]

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 milestone as follows:

**1. Milestone 1: Secure Host Site agreement, site development and utility upgrades.**

Reimbursement of eligible costs incurred, up to 20% of the total Capital Incentive, will be **disbursed** following documentation, which shall include copies of paid invoices, **of all of** the following deliverables for a Host Site:

- Host Site agreement executed
- Executed Conditional Assignment of Lease (Rider E) 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 milestone.

**2. Milestone 2: Acquisition, installation and commissioning of all equipment and connection of utility and communication services at EV Charging Site.** Payment of 80% of the Capital Incentive will be disbursed following documentation, which shall include copies of paid invoices, **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 (Rider D)
- Executed Option Agreement (Rider F)
- EV Charging Stations visible at the Department of Energy's Alternative Fuels Data Center ([http://www.afdc.energy.gov/fuels/electricity\\_locations.html](http://www.afdc.energy.gov/fuels/electricity_locations.html))
- EV Charging Stations visible and listed as "Public" on PlugShare.com and the PlugShare mobile app.
- EV Charging Station real-time availability and status available at [REDACTED].com and the [REDACTED] mobile app
- Payment Options listed in Rider A, Section A(6) are operational.

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 milestone.

**3. Milestone 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 2.6 of the RFP, will be **disbursed quarterly, on a per site basis**, following documentation **of all of** the actual utility

demand charges incurred by the DCFC awarded through this agreement 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 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](mailto: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 Service Credits shall be calculated quarterly on a site-by-site basis.

- a. Limiting Individual DCFC Port Downtime: In the event that a Downtime event for an individual DCFC port 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 Port: 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 the annual Charging Port Uptime standard described in Rider A, Section B(1)(c).
- c. Customer Service and Reporting: The Trust also shall be entitled to a Service Credit equal to 5% of the quarterly Demand Charge Incentive 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. **REPORTING; RECORD RETENTION AND INSPECTION.** Recipient shall make and maintain all such documents and records necessary to establish proper performance of the Project Services and to support all invoices and requests for payment under this Agreement. 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 NEVI FUNDS. It is understood and agreed that the source of the Capital Incentive Award under this Agreement is that portion of the National EV Infrastructure Formula Funds (the "NEVI Funds") expressly allocated to the Trust under the Memorandum of Agreement between the State of Maine Department of Transportation, the Governor's Energy Office, and Efficiency Maine Trust dated on or about January 20, 2023. If the NEVI Funds are reallocated 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 otherwise, 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. CONFLICTING REQUIREMENTS. If any term or condition in this Rider C directly conflicts with any term or condition contained in Rider C-1 (Federal EV Funds Contract Requirements), the terms and conditions of Rider C-1 shall control.
21. 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.

22. 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.
23. 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.
24. 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.
25. 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.
26. VENDOR OR CONTRACTOR SELECTION. Recipient may select any vendor or contractor to provide the equipment and perform the work contemplated by this Agreement.
27. 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.

28. 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.
29. 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 C-1****FEDERAL EV FUNDS CONTRACT REQUIREMENTS**

Efficiency Maine Trust is a Subrecipient, through the Maine Department of Transportation, of certain federal funds authorized under the 2021 Bipartisan Infrastructure Law (“BIL”), including funds established under the National Electric Vehicle Formula Program, as a component of the Federal Highway Administration’s Highway Infrastructure Program, to strategically deploy EV charging infrastructure (“NEVI Program Funds”). The NEVI Program Funds are referred to herein as the “Federal EV Funds.” The Services to be performed and the equipment and materials to be provided under this Agreement are funded through these Federal EV Funds and, as such, the Trust is required to include, and the Recipient is required to observe, certain contract provisions described in Appendix II to 2 CFR Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Federal Highway Administration (“FHWA”) regulations set forth in 23 C.F.R. §680.118 of the National Electric Vehicle Infrastructure Standards and Requirements, and FHWA Form FHWA-1273 (Required Contract Provisions – Federal-Aid Construction Contracts).

To the extent applicable to the Services provided under the Agreement, Recipient shall comply with each of the following additional contract provisions, which provisions are expressly incorporated into and made part of the Agreement. References in the required federal contract provisions to “contractor” shall include the Recipient and references to the “contract” shall include the Agreement.

**Form FHWA-1273** is attached hereto as **Appendix A** to this Rider C-1. Recipient shall comply with all laws and regulations specified in Form FHWA-1273 and shall flow down and insert the same requirements in any lower tier Project subcontracts. To the extent that anything contained in Form FHWA-1273 conflicts with the regulations set out in Appendix II to 2 CFR Part 200 (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards), Form FHWA -1273 shall control.

**National Electric Vehicle Infrastructure Standards and Requirements** (23 C.F.R. §680.118):

(a) **Buy America Requirements** – 23 U.S.C. §313. Pursuant to 23 C.F.R. §680.118(a), the Buy America requirements set forth in 23 U.S.C. §313 apply to EV charger projects using NEVI Program Funds.

[Notwithstanding the foregoing, on February 21, 2023, the FHWA issued a temporary public interest waiver to waive Buy America requirements for steel, iron, manufactured products, and construction materials in EV chargers. The temporary waiver is effective March 23, 2023. The FHWA summary of this temporary waiver reads as follows:

*“The Federal Highway Administration (FHWA) is establishing a temporary public interest waiver to waive Buy America requirements for steel, iron, manufactured products, and construction materials in electric vehicle (EV) chargers. This short-term, temporary waiver enables EV charger acquisition and installation to immediately proceed while also ensuring the application of Buy America to EV chargers by the phasing out of the waiver over time. On the effective date of this waiver, it will apply to all EV chargers manufactured by July 1, 2024, whose final assembly occurs in the United States, and whose installation has begun by October 1, 2024. Beginning with EV chargers manufactured on July 1, 2024, FHWA will phase out coverage under this waiver for those previously covered EV chargers where the cost of components manufactured in the United States does not exceed 55 percent of the cost of all components. This second phase will therefore apply to all EV chargers that are manufactured on or after July 1, 2024, whose final assembly occurs in the United States, and for which the cost of components manufactured in the United States is at least 55 percent of the cost of all components. For all phases, EV charger housing components that are predominantly steel and iron are excluded from the waiver and must meet current FHWA Buy America requirements. As of the effective date of this waiver, FHWA is also removing EV*

*chargers from its existing general applicability waiver for manufactured products.” See 88 FR 10619 (02/21/2023).]*

(b) Davis Bacon Federal Wage Requirements – 40 U.S.C. 3141-3148; 29 CFR Part 5. Pursuant to 23 U.S.C. §109(s)(2) and 23 C.F.R. §680.118(b), projects to install EV chargers are treated as if the project is located on a Federal-aid highway and, therefore, Davis Bacon Federal wage requirements apply to the project. Statutorily prescribed wages must be paid for any project funded with NEVI Formula Program Funds. See *also*, Appendix A hereto, Form FHWA-1273 (Required Contract Provisions – Federal-Aid Construction Contracts).

(c) Americans with Disabilities Act of 1990 (ADA). Pursuant to 23 C.F.R. §680.118(c), EV charging stations must comply with applicable accessibility standards adopted by the Department of Transportation into its ADA regulations (49 CFR part 37) in 2006, and adopted by the Department of Justice into its ADA regulations (28 CFR parts 35 and 36) in 2010.

(d) Title VI of the Civil Rights Act of 1964. Pursuant to 23 C.F.R. §680.118(d), Title VI of the Civil Rights Act of 1964, and implementing regulations, apply to the NEVI Program to ensure that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(e) Title VIII of the Civil Rights Act of 1968 (Fair Housing Act). Pursuant to 23 C.F.R. §680.118(e), all applicable requirements of Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), and implementing regulations, apply to the NEVI Program.

(f) [Reserved].

(g) Uniform Relocation Assistance and Real Property Acquisition Act. Pursuant to 23 C.F.R. §680.118(g), the Uniform Relocation Assistance and Real Property Acquisition Act, and implementing regulations, apply to the NEVI Program by establishing minimum standards for federally funded programs and projects that involve the acquisition of real property (real estate) or the displacement or relocation of persons from their homes, businesses, or farms.

(h) National Environmental Policy Act of 1969 (NEPA). Pursuant to 23 C.F.R. §680.118(h), the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's NEPA implementing regulations, and applicable agency NEPA procedures apply to the NEVI Program by establishing procedural requirements to ensure that Federal agencies consider the consequences of their proposed actions on the human environment and inform the public about their decision making for major Federal actions significantly affecting the quality of the human environment.

**Appendix II to 2 CFR Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards:**

Equal Opportunity (41 CFR §§ 60-1.3 and 60-1.4(b) (For federally-assisted construction contracts for “construction work,” including the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.”)

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take

affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

*Provided*, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Davis-Bacon Act (40 U.S.C. 3141-3148; 29 CFR Part 5) (For prime construction contracts over \$2,000). The Federal wage requirements of the Davis Bacon Act apply to this Project. In accordance with the statute, contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors are required to pay wages not less than once a week. *See also*, Appendix A hereto, Form FHWA-1273 (Required Contract Provisions – Federal-Aid Construction Contracts).

Copeland “Anti-Kickback” Act (40 USC § 3145-3148; 29 CFR Part 3) (For prime construction contracts over \$2,000).

**Contractor.** The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated herein by reference.

**Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clause above and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

**Breach.** A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708; 29 C.F.R. § 5.5(b)(1)-(4); § 5.5(c)) (For contracts over \$100,000 that involve the employment of mechanics, laborers, and construction work). *See also*, Appendix A hereto, Form FHWA-1273 (Required Contract Provisions – Federal-Aid Construction Contracts)

**Compliance with the Contract Work Hours and Safety Standards Act.**

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Trust shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

Further Compliance with the Contract Work Hours and Safety Standards Act.

(1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Clean Air Act and Federal Water Pollution Control Act (42 U.S.C. §§ 7401-7671q) (For contracts over \$150,000). *See also*, Appendix A hereto, Form FHWA-1273 (Required Contract Provisions – Federal-Aid Construction Contracts)

Clean Air Act

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The contractor agrees to report each violation to the Trust and understands and agrees that the Trust will, in turn, report each violation as required to assure notification to the US Department of Treasury, the State of Maine Department of Administrative and Financial Services, and the appropriate Environmental Protection Agency Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance under the CSFRF/CLFRF.

Federal Water Pollution Control Act

The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The contractor agrees to report each violation to the Trust and understands and agrees that the Trust will, in turn, report each violation as required to assure notification to the US Department of Treasury, the State of Maine Department of Administrative and Financial Services, and the appropriate Environmental Protection Agency Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided under the CSFRF/CLFRF.

Debarment and Suspension (2 C.F.R. Part 180 (implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989)) (For all contracts and subcontracts for \$25,000 or more). *See also*, Appendix A hereto, Form FHWA-1273 (Required Contract Provisions – Federal-Aid Construction Contracts)

This contract is a covered transaction for purposes of 2 C.F.R. Part 180 if the contract amount exceeds \$25,000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The contractor must comply with 2 C.F.R. Part 180, subpart, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by the Trust. If it is later determined that the contractor did not comply with 2 C.F.R. Part 180, subpart C, in addition to remedies available to the Trust, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

Byrd Anti-Lobbying Amendment (2 C.F.R. Part 200, Appendix II, § I (citing 31 U.S.C. § 1352) (For contracts of more than \$100,000, and for subcontracts of more than \$100,000). See *also*, Appendix A hereto, Form FHWA-1273 (Required Contract Provisions – Federal-Aid Construction Contracts)

Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

*If applicable*, contractors must sign and submit a certification to the Trust containing the following language with each bid or offer exceeding \$100,000:

#### APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

##### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification

shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, [INSERT NAME], certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Procurement of Recovered Materials (2 C.F.R. Part 200, Appendix II, § J (citing 2 C.F.R. § 200.323; Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962)) (For all contracts procurements over \$10,000 made by a state agency or an agency of a political subdivision of a state and its contractors).

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or
- At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Prohibition on Contracting for Covered Telecommunications Equipment or Services (Section 889(b)(1) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 and 2 C.F.R. § 200.216) (For recipients and subrecipients of federal loan or grant funds).

Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director

of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Domestic Preferences for Procurements (2 C.F.R. Part 200, Appendix II, § L (citing 2 C.F.R. § 200.322) For all federally-funded contracts).

As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

*Produced in the United States* means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

*Manufactured products* mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.”

[ATTACH APPENDIX A - Form FHWA-1273 (Required Contract Provisions – Federal-Aid Construction Contracts)]

**Rider D**

**SECURITY AGREEMENT**

1. **Grant of Security Interest, Parties and Collateral**

\_\_\_\_\_, a [corporation/limited liability company] 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, or committed to be paid and advanced, to Obligor by **EFFICIENCY MAINE TRUST** whose mailing address is 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 all 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 above (as 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 [REDACTED] 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) Breach of any covenant of Obligor made herein.

(e) 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.

(f) Any voluntary or involuntary transfer, in any manner of Obligor's rights in the Collateral.

(g) 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 such 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 any Conditional Assignment of Lease that may be executed between Obligor and Secured Party.

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 at law, equity, or under any ancillary agreement between the parties. 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.

*{Signature Page Follows}*

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

WITNESS:

\_\_\_\_\_

OBLIGOR:

[REDACTED]

By: \_\_\_\_\_

Name: [REDACTED]

Its: [REDACTED]

SECURED PARTY:

EFFICIENCY MAINE TRUST

\_\_\_\_\_

By: \_\_\_\_\_

Name: [REDACTED]

EXHIBIT A  
[DESCRIPTION OF SECURED COLLATERAL]

EXHIBIT B  
[HOST SITE LOCATION(S)]

**RIDER E**

CONDITIONAL ASSIGNMENT OF LEASE

THIS CONDITIONAL ASSIGNMENT OF LEASE (this "Assignment") is made as of the [REDACTED] day of [REDACTED], 20XX, by and among [REDACTED], a [corporation/limited liability company] organized and existing under the laws of the State of [REDACTED] whose mailing address is [REDACTED] ("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**, an independent quasi-state agency of the State of Maine, 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 [REDACTED], a true and correct copy 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 (or its designated 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, and Landlord and Assignor agree to execute any such documents may be necessary for recording.

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 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: \_\_\_\_\_

EMT EV CHARGING INCENTIVE AGREEMENT

Its: \_\_\_\_\_

ASSIGNEE:  
EFFICIENCY MAINE TRUST

\_\_\_\_\_

By: \_\_\_\_\_

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

Its: \_\_\_\_\_

EXHIBIT A  
[COPY OF LEASE/HOST SITE AGREEMENT]

**RIDER F**

OPTION AGREEMENT

THIS OPTION AGREEMENT (this "Agreement") is entered into on this [REDACTED] day of [REDACTED], 20[REDACTED] by and between [REDACTED], a [REDACTED] [corporation/limited liability company] with a mailing address of [REDACTED] ("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 [REDACTED], 20XX (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 under the terms and conditions of this Option 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 Equipment, Improvements, and Licenses being hereinafter collectively referred to as the "Property").

1.3 Conditions of Exercise.

(a) During the term of this Incentive Agreement (the "Option Period"), Grantee shall have the right to exercise the Option at any time upon and after (i) Grantor's uncured breach of the Incentive Agreement; (ii) 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; (iii) Grantor's agreement to sell or assign all or

substantially all of its assets during the Option Period; (iv) 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 or membership interests in Grantor; or (v) 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 at the end of the ten-year term stated in the Incentive Agreement (the "Option Expiration Date").

(b) Grantor shall provide Grantee prompt written notice of the occurrence of any event or occurrence constituting or giving rise to a condition of exercise as set forth in Section 1.3(a) (except that Grantor shall not be obligated to provide Grantee with written notice of the condition set forth in Section 1.3(a)(i)).

1.4 Notice of Exercise; Notice Expiration Date. If, during the Option Period, a condition of exercise as set forth in Section 1.3 occurs, Grantee shall have the right to give Grantor written notice of its intent to exercise Grantee's Option rights. The Grantee may exercise the Option to acquire Property at the subject Host Site by giving Grantor written notice of exercise within thirty (30) days of Grantee's receipt of notice from Grantor as required in Section 1.3(b) of the specific condition of exercise. The Grantee's Option shall expire with regard to the Property at the subject Host Site at the end of the thirty-fifth (35<sup>th</sup>) day following Grantee's receipt of notice from Grantor as required in Section 1.3(b) of the condition of exercise (the "Notice 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 subject 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.

IN WITNESS WHEREOF, the parties hereto have executed this Option Agreement by their duly authorized representatives as of the date first written above.

WITNESS:

\_\_\_\_\_

GRANTOR:

\_\_\_\_\_

By \_\_\_\_\_

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

Its: \_\_\_\_\_

GRANTEE:

**EFFICIENCY MAINE TRUST**

By \_\_\_\_\_  
Printed Name: Michael D. Stoddard  
Its: Executive Director

\_\_\_\_\_

**EXHIBIT A**

(Description of Equipment and Host Site Locations, as amended from time to time)