

## Micromobility Make-Ready Program Agreement

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

#### **I. Introduction**

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

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

O&R will determine eligibility to participate in the Program based on O&R’s review process, including as more particularly set forth as part of this Agreement and the criteria established for participation in the Program as described in the *Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. Micromobility Program Implementation Plan* filed with the New York Public Service Commission on February 1, 2024 (“Implementation Plan”) and the Participant Guide, which is incorporated herein by this reference and is available on the Company’s Micromobility Make-Ready Program website (the “Program Website”), and as may be updated from time to time. Among other requirements, to be eligible for the Program, the micromobility charging site must be publicly accessible and located in a disadvantaged community or in or adjacent to a multi-unit dwelling meeting certain criteria wherein at least 25% of units have a calculated household income no more than 80% of the greater of the Area or State Median Income. In addition, once the Participant is approved to be a part of the Program, the Participant must not have begun construction or installation of the micromobility charging site before November 16, 2023.

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

### III. Agreement Structure

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

#### Part II: General Project Information

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

#### Participant Information ({{APPLICATION NUMBER}})

Company Name (full legal name):

Contact:	Title:	Email:	Phone:
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#### Contractor Information

Company Name (full legal name):

Contact:	Title:	Email:	Phone:
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#### Site Information

Site Host (if different from Participant):

Street Address:	City:	State:	Zip:
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Letter of Authorization and Acknowledgement from Site Host Confirmed (Yes/No/Not Applicable):

#### Project Information

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

##### Basic Project Information

- Number of plugs:
- Site Accessibility:
- Disadvantaged Community Status:

##### Make-Ready Costs of the Project

Eligible Utility-Side Make-Ready Costs (sales tax may also be owed by the Participant): \$

Eligible Customer-Side Make-Ready Costs: \$

Total Eligible Make-Ready Costs: \$

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

The parties acknowledge and agree that determinations of “utility-side costs” and “customer-side costs” are important to any determination of incentive awards. “Utility-side costs” are costs to O&R to establish utility services to serve the Participant determined by O&R to be additional costs to the costs reasonably necessary to establish adequate utility services to serve the Participant to which the Participant would otherwise be entitled under the applicable O&R tariff, and such additional costs, if any, may include costs necessary to achieve objectives of the Participant in connection with the Project. For more clarity, the cost to O&R to establish utility services requested by the Participant for the Project **minus** costs determined by O&R as necessary for adequate services, **equals** utility-side costs. Utility-side costs may be allocated to costs

associated with making the Project ready for current use given available technology and desired capability, or “make ready” costs.

As may be more particularly provided for by the Participant Guide, “customer-side costs” are costs necessary to make a Site ready to accept and operate a micromobility charger (excluding O&R costs to establish adequate utility services, and utility-side costs, if any), and customer-side costs eligible for incentives based on a determination made by O&R may include (1) costs for such things as conduit, trenching, and panels needed for a micromobility charging station, (2) costs as might relate to permitting and electrical design, (3) utility and back-up power generation charges, if any, for an outage deemed necessary by O&R to connect micromobility chargers to utility service, and (4) any equipment supporting fire suppression and safety of the micromobility charging site. For clarity and the avoidance of doubt, a micromobility charger (excluding micromobility chargers with embedded fire suppression technology), as well as associated costs related to the establishment (e.g., pedestal) and use (e.g., network, signage) of a micromobility charger will not be determined by O&R to be customer-side costs eligible for incentives. Customer-side costs may also be allocated to make-ready costs.

Consistent with the rules of the Program, costs (including both utility-side costs and customer-side costs) associated with making the Project ready for anticipated future use given anticipated enhancements in future technology and desired enhanced capability, or “future-proofing,” shall not be eligible for incentives.

#### Utility-Side Plan Elected

The parties understand and agree that the implementation of a utility-side plan leading to the establishment of utility-side services (and the calculation of related utility-side costs) by O&R will depend on an election by the Participant of a configuration proposed by O&R to the Participant to achieve the objectives of the Participant in connection with the Project. Key aspects of the utility-side plan to be implemented by O&R based on the election by the Participant shall be as more particularly provided for by the “Utility-Side Plan” set forth below.

Description of Utility-Side Plan:

#### Preliminary Incentive Award – Summary

The Preliminary Incentive Award may cover both utility-side costs and eligible customer-side costs. If there are utility-side costs as part of the Project, then the Company may cover up to 100% of utility-side costs, which would be considered part of the overall incentives awarded to the Participant. If there are no utility-side costs, then the Participant will receive an incentive award for eligible customer-side costs. The parties understand and agree that the final incentive award (the “Final Incentive Award”) made to the Participant may be different than the Preliminary Incentive Award depending on the actual equipment installed, final project costs, and other things. For example (1) work verification may reveal that what is ultimately installed differs from the details outlined in the Project Information, and (2) the final project costs may prove lower than what is proposed as of the date of this Agreement.

The total Preliminary Incentive Award for the Project reflects the responsibility of the Participant for utility-side costs less the Preliminary Incentive Award to the Participant for customer-side costs, and as more particularly set forth below in this section. As such, the parties understand and agree that if there is a reduction, termination, or claw-back of any part or whole of the Preliminary Incentive Award to the Participant for customer-side costs, then such reduction, termination or claw-back could result in an adjustment of the total incentive award for the Project, and so the Final Incentive Award could be less than the Preliminary Incentive Award.

**Total Preliminary Incentive Award for the Project: \$**

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

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

The Responsibility of the Participant for Utility-Side Make-Ready Costs (sales tax may also be owed by the Participant): \$

The Preliminary Incentive Award to the Participant for Eligible Customer-Side Costs  
 The Preliminary Incentive Award to the Participant for Customer-Side Make-Ready Costs: \$  
 The Total Preliminary Incentive Award to the Participant: \$

**Customer-Side Installation Schedule**

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

Estimated Start Date:	Estimated Completion Date:
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**Part III: Terms and Conditions**

**I. INCENTIVES – STRUCTURE AND ELIGIBILITY**

The amount of the financial incentive for the Project is determined by O&R and is consistent with the *New York Public Service Commission (PSC) Order Approving Midpoint Review Whitepaper’s Recommendations with Modifications*, issued and effective November 16, 2023 (the “Midpoint Order”) (the Midpoint Order, and as either may be modified, updated and amended by the PSC from time to time, the “PSC Order”). As otherwise provided for hereunder, the Final Incentive Award may be different than the Preliminary Incentive Award. O&R’s determination of incentive amounts is final. Incentives will first cover utility-side costs, as may be applicable, and the remaining incentive amounts will then go to the Participant to cover eligible customer-side costs. The Participant is responsible for the payment of the balance of costs not covered by incentive, including any cost overruns related to customer-side costs or any increase in utility-side costs. For clarity, incentive payments are designed to offset eligible customer-side make-ready charging infrastructure costs of the Project and shall not be allocated to non-eligible costs of the Project, as more particularly set forth as part of the Participant Guide. Among other things, and as provided by the Participant Guide, eligible costs under the Program include micromobility chargers with embedded fire suppression technology, but do not otherwise include any equipment associated with the micromobility charger itself (e.g., micromobility chargers without embedded fire suppression technology, power blocks, modules, mounting hardware). The parties understand and agree that any efforts in furtherance of the Project prior to the Program Agreement being signed on behalf of the Participant and all required information and relevant documents relating to the Project being provided is at the sole discretion and risk of the Participant, including, without limitation, efforts as might relate to customer orders, purchases, or installs of qualifying equipment.

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

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

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

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

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

O&R is not responsible for any taxes that may be imposed on the Participant or any other party as a result of participation in the Program (directly or indirectly), including with respect to incentives received under the Program. O&R recommends that a tax advisor should be consulted regarding any tax consequences of participation in the Program. The Participant must provide to O&R its valid Federal Tax Identification Number and a W-9 form and may be issued an appropriate Federal Tax Form concerning any incentive payment made to the Participant.

### **V. FINANCING ACCOMMODATIONS**

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

### **VI. ASSET OWNERSHIP AND OPERATIONAL CONTROL**

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

### **VII. CHANGE OF OWNERSHIP**

The parties acknowledge and agree that ownership of micromobility charging stations may change by transfer or that stations may be upgraded during the term of this Agreement; provided, however, that the number of plugs and the capacity of any charging station shall not decrease, and that the Participant or transferee, as the case might be, shall continue to meet all performance and reporting obligations of the Program; and, provided, further, that any new owner receiving by transfer is required to be a successor-in-interest to all of the obligations of the Participant hereunder, and the Participant shall provide O&R with notice of any such transfer with all details relating to the transfer and the transferee, including, without limitation, the contact information of the transferee.

### **VIII. MULTIPLE PROJECTS**

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

### **IX. PROGRAM CHANGES**

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

### **X. EQUIPMENT REQUIREMENTS**

In general, in order for the Participant to be eligible to receive incentives, the Project must relate to micromobility infrastructure for the deployment of micromobility charging station projects in the Company's electric service territory, and

there must be displayed on each charger easily identifiable, up-to-date contact information for the micromobility service provider, consistent with the eligibility requirements outlined by the PSC Order. The Project must begin construction after November 16, 2023, and must serve micromobility devices, such as electric bikes and electric scooters.

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

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

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

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

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

The Participant shall complete the construction of the customer-sided work and operate the micromobility chargers in accordance with the requirements of the Program. Among other things, the following requirements must be satisfied during the term of the Program Agreement:

- Plugs must be operational 95 percent of the time (annually);
- Charging stations at a site must be operational 99 percent of the time (annually), with a minimum of 50 percent of the plugs considered to be “up” at all times;
- All charging stations in the Program must operate for a minimum of five years; and
- Easily identifiable, up-to-date contact information for the micromobility service provider shall be displayed on each charger.

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

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

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

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



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

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

Data and information shall be provided by the Participant to O&R (or to a third-party consultant designated by O&R) on a quarterly basis, or more frequently as may be noticed by O&R to the Participant. O&R (or a third-party consultant on behalf of O&R) shall receive data and information from the Participant, and, as permissible, shall anonymize and aggregate such data and information before further sharing, including with the PSC.

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

- Program participation, including but not limited to:
  - Site location;
  - Whether the site is located in a geographic Disadvantaged Community;
  - Number of plugs installed;
  - Aggregated kW Nameplate Capacity;
  - Incentive levels received by a given site; and
  - Incentives received from other funding sources (including, without limitation, the EV Make-Ready program).
- Plug and charging session data, including but not limited to:
  - The number of sessions daily;
  - Aggregated percent utilization per site; and
  - Plug outage information (plug outage information is to include the number and duration of outages and is to be differentiated by expected outages (for maintenance) and unexpected outages).

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

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

**XVI. DISPUTES**

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

**XVII. EVENTS OF DEFAULT**

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

**XVIII. REPRESENTATIONS OF THE PARTICIPANT**

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

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

**XIX. FORCE MAJEURE**

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

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

No new incentives will be issued under the Program when incentive funds allocated to the Program are depleted or when the Program is terminated, whichever occurs first, or as otherwise determined by O&R. If there is a change of any detail with a potential known or unknown impact to the Project, whether or not pertaining to the Site ("Project Details"), then the Participant must notify O&R, and any change in Project Details determined by the Company to be material may lead to modification of the Program Agreement, or termination of the Program Agreement citing an Event of Default. If there is a change in Project Details notified to O&R that does not impact the site engineering analysis, or any change in Project Details



that O&R decides in the Company's discretion is with no potential to impact materially the Project in a manner important to the Company's objectives, then the Company may choose to continue with the Project without modification to the Program Agreement, or to continue with the Project with modification to the Program Agreement sufficient to reflect the change in Project Details. If there is a termination of the Program Agreement due to a determination of O&R based on a change in Project Details, then the Participant may have the option to propose another application to the Program on the Program Website, and, if the application is permitted to be made and is accepted, then the project will be the subject of a new agreement between the Participant and the Company.

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

#### **XXI. REMOVAL OF EQUIPMENT**

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

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

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

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

#### **XXIII. DISCLAIMER**

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

**XXIV. NO REPRESENTATIONS OR WARRANTIES**

NEITHER THE COMPANY NOR ITS CONTRACTORS, REPRESENTATIVES OR AGENTS MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND (WHETHER ARISING BY IMPLICATION OR BY OPERATION OF LAW) WITH RESPECT TO THE PROGRAM, THE PROJECT, THE ADEQUACY OF ANY DESIGN OR PLAN RELATED TO THE PROJECT, OR ANY EQUIPMENT, CONSTRUCTION OR INSTALLATION OF EQUIPMENT, THE PERFORMANCE OF A CONTRACTOR, OR THE AMOUNT OF INCENTIVES TO BE PAID WITH RESPECT TO THE PROJECT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER MATTER. THIS PROVISION SHALL SURVIVE THE EXPIRATION, TERMINATION OR CANCELLATION OF THIS AGREEMENT AND THE PROGRAM AND ANY PARTICIPATION THEREIN BY THE PARTICIPANT.

**XXV. LIABILITY LIMITATION**

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

**XXVI. RELEASE; INDEMNIFICATION**

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

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

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

**XXVIII. SEPARATE COUNSEL**

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

**XXIX. SEVERABILITY**

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

**XXX. NOTICES**

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

to the Company:

e-mail: [dl-micro@oru.com](mailto:dl-micro@oru.com)

with a copy to:

Orange and Rockland Utilities, Inc.

One Blue Hill Plaza,  
Pearl River, NY 10965

Attn: Section Manager of E-Mobility, Business Development

and a copy to:

Consolidated Edison Company of New York, Inc.

4 Irving Place, New York, NY 10003

Attn: Associate General Counsel, Commercial Transactions

to the Participant:

e-mail:

with a copy to:

Address:

Attn:

**XXXI. HEADINGS**

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

**XXXII. MODIFICATION; AMENDMENT OR SUPPLEMENT**

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

**XXXIII. NON-ASSIGNMENT**

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

**XXXIV. INDEPENDENT CONTRACTORS**

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

**XXXV. ACCEPTANCE OF CONTRACT OFFER**

This Agreement is an offer by O&R to the Participant to enter into a contract, which offer must be accepted by or on behalf of the Participant, including by a valid acknowledgement electronically or by signature. If this Agreement is not accepted by or on behalf the Participant within 30 days of the offer by O&R to the Participant, then O&R may withdraw the offer and with no further obligation to the Participant (or any third party) to enter into a contract with the Participant.

**XXXVI. CONTRACT FORMATION; AMENDMENTS**

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

**XXXVII. COUNTERPARTS**

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

**Agreement and Signature (Required for all Agreements)**

I certify that all statements made in this Agreement and required information and documents provided in connection herewith are true and correct to the best of my knowledge. I agree to the terms and conditions of this Agreement and the Program.

<b>Participant</b> <i>(please print name and title)</i>	<b>Signature (Participant)</b>	<b>Date</b>
<b>O&amp;R Authorized Representative</b> <b>(please print name and title)</b>	<b>Signature (O&amp;R)</b>	<b>Date</b>