

This Agreement is made effective as of the ____ day of January, 2024. (the “Effective Date”)

PARTICIPATION AGREEMENT FOR THE DEPLOYMENT OF CHARGING STATIONS FOR ELECTRIC VEHICLES (the “Agreement”)

BETWEEN: **THE CITY OF FREDERICTON**, a local government under and by virtue of the *Local Governance Act*, SNB 2017, c.18, located at 397 Queen Street, Fredericton, New Brunswick, E3B 1B5;

Hereinafter referred to as the "Station Owner",

AND: **NEW BRUNSWICK POWER CORPORATION**, a Crown corporation established by the New Brunswick Electricity Act, having its head office and principal place of business at 515 King Street, in the City of Fredericton, Province of New Brunswick, Canada, E3B 4X1;

Hereinafter referred to as "NB Power",

(collectively referred to as the “Parties” and individually as a “Party”)

WHEREAS NB Power wishes to promote the deployment of an infrastructure of public charging stations for electric vehicles in the parking lots of certain commercial enterprises in New Brunswick and in parking spaces belonging to municipalities or other public bodies to promote the autonomy of electric vehicles (the “e-Charge Network”); and

WHEREAS the Station Owner currently owns and/or wishes to acquire and install electric vehicle charging stations (the “Charging Stations”), in order to offer a public charging service for electric vehicles; and

WHEREAS NB Power wishes to expand the number of station owners participating in the e-Charge Network to promote the development and accessibility to public Charging Stations; and

WHEREAS the Station Owner wishes to be part of the e-Charge Network on the condition that it adhere to the operating rules of the e-Charge Network; and

WHEREAS both Parties subscribe to the principles of sustainable development and wish, through this Agreement, to promote them to their respective clienteles; and

WHEREAS following a pilot program and a Request for Expression of Interest to provide a charging network and charging stations, NB Power entered into a contract with AddÉnergie Technologies Inc. (AddÉnergie Technologies Inc. and any other supplier chosen by NB Power being hereinafter referred to as a "Recommended Supplier") and

the Station Owner wishes to utilize the charging stations supplied by the Recommended Supplier in order to participate in the e-Charge Network;

NOW THEREFORE WITNESSETH THAT in consideration of the mutual covenants contained in this Agreement, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1 - INTERPRETATION

- 1.1 The preamble forms an integral part of this Agreement.
- 1.2 The division of this Agreement into Articles, Sections, Subsections and other subdivisions and the insertions of headings are for convenience of reference only and shall not affect or be utilized in the construction or the interpretation hereof.
- 1.3 Where required herein, the singular shall comprise the plural and vice versa, the masculine shall include the feminine and vice versa while the neuter shall comprise both the masculine and feminine.
- 1.4 All references to dollars in this Agreement shall be to Canadian dollars.

ARTICLE 2 – NB POWER’S OBLIGATIONS

- 2.1 Throughout the Term of this Agreement, NB Power agrees:
 - (a) to use commercially reasonable efforts to design and proceed with necessary procurement actions to enable Station Owner to acquire Charging Stations at competitive prices and conditions;
 - (b) that any procurement obligations shall include a requirement for the provision of a manufacturer’s guarantee (parts and labour) of at least one year and an offer of an optional extended guarantee;
 - (c) to perform testing to ensure the charging stations of Recommended Suppliers meet the required specifications to operate in New Brunswick climate conditions; and
 - (d) that subject to confidentiality obligations to third parties, if any, it will upon request, make available to the Station Owner on a confidential basis the results of the tests performed on the charging stations of the Recommended Suppliers.
- 2.2 NB Power shall regularly promote and advertise the e-Charge Network to maintain public recognition of the network.

- 2.3 NB Power, in conjunction with the Recommended Supplier will provide the public with access to the e-Charge Network, in order to ensure that a common web and mobile user interface is available for locating the Charging Stations within New Brunswick and across Canada.
- 2.4 NB Power agrees not to use the name, image, logo, or any visual identification of the Station Owner without its prior written consent and only within the limits of such consent. NB Power may, however, use the Station Owner's logo on any physical or electronic medium for the purpose of indicating where the Charging Stations are located and to display its participation in the e-Charge Network. If the Station Owner chooses to add their Corporate Logo to the Charging Station, its logo must be installed in the location designated by NB Power to ensure consistency across the e-Charge Network (a depiction of the technical specifications for logo location and display is attached hereto as Schedule "A" and forms part of this Agreement).

ARTICLE 3- STATION OWNER'S OBLIGATIONS

- 3.1 The Station Owner agrees to acquire or currently has installed, a minimum of one (1) Charging Station that has been acquired or will be acquired from the Recommended Supplier. The Station Owner understands and agrees that NB Power will not be held responsible for the improper operation, defects, poor performance, or any other failure of the Charging Stations, and that any claims or recourse must be exercised by the Station Owner solely against the Recommended Supplier.
- 3.2 Subject to the issuing of any permits required by the proper authorities and any third-party authorization required, as the case may be, the Station Owner agrees to install any new Charging Stations acquired within three months of their delivery date, except where climatic conditions require an extension of this timeframe. The Charging Stations will be installed in parking spaces (i) belonging to the Station Owner in the locations selected by the Station Owner, or (ii) on a leased property, provided that the Station Owner can prove, to the satisfaction of NB Power, that it has the permission of the property owner to install, operate, and maintain the Charging Station(s). The Station Owner will, at its expense, provide, maintain, and clear the snow from one parking space per Charging Station installed for the exclusive use by the public that are registered users of the e-Charge Network ("Reserved Parking Spaces").
- 3.3 The Station Owner will assume responsibility and all direct and indirect costs of acquiring, installing, operating, and maintaining the Charging Stations and agrees to comply with the standards and instructions provided by the Recommended Supplier, in particular, those related to safety.

- 3.4 The Station Owner shall charge for the charging service in accordance with and at the rates specified in the NB Power Rates Schedules and Policies Manual (“RSP Manual”), Section N-7 Electric Vehicle Charging Rate Schedule, as may be amended from time to time. The rates set out in the RSP Manual are intended to assist the Station Owner in offsetting its infrastructure and maintenance costs associated with its installation of the Charging Stations and its participation in the e-Charge Network. In no event is the Station Owner permitted to resell electricity.
- 3.5 The Station Owner agrees that all revenue derived from the use of the Charging Stations will be collected by the Recommended Supplier or its representative. The Recommended Supplier will remit all applicable taxes to the appropriate government authorities and will also retain 15% of the revenue for the supply and management of the automated payment service at the Charging Station. All remaining revenue will be remitted quarterly to the Station Owner by the Recommended Supplier or its representative.

Example:	Gross Revenue	10.00
	Tax	1.50
		8.50
	Deduction	
	Transaction Fee	1.28
	HST	.19
	Total Transaction Fee	1.47
	Distributable Revenue	7.03

- 3.6 Subject to stoppages for maintenance, safety, or any major problems with the operation of a charging station, the Station Owner agrees to make the Charging Stations and Reserved Parking Spaces accessible for public use at all times (twenty- four (24) hours a day and seven (7) days a week) on a first come, first served basis to all those wishing to use the charging station, whether or not they purchase the goods and services of the Station Owner.
- 3.7 The Station Owner undertakes not to use the name, image, logo, or any visual identification of NB Power without its prior written consent, and only within the limits of such consent.
- 3.8 The Station Owner shall advise NB Power of the cessation of operation of a Charging Station and, except in cases of breakdown or repairs, it shall dismantle and remove it from the site as soon as possible, all in accordance with section 5.3.

- 3.9 The Station Owner shall provide NB Power with prior written notification of any intention to sell or otherwise transfer ownership of the Charging Station(s), all in accordance with the requirements contained in Article 6.
- 3.10 In the event that Charging Station(s) will be located on leased property, the Station Owner certifies that it has permission from the property owner to install, operate, and maintain the Charging Station(s).

ARTICLE 4 – LIABILITY AND INDEMNITY

- 4.1 The Station Owner agrees to be responsible for and shall be liable for the actions of itself as well as those of its employees, agents, consultants, directors and/or subcontractors. The Station Owner shall indemnify, hold harmless and, upon NB Power's written request, defend NB Power, its employees, agents, consultants and/or directors from and against all claims, demands and/or losses of any type, including reasonable attorneys' fees, in connection with, in whole or in part:
- (a) any negligent act or omission, or willful misconduct of the Station Owner, its employees, agents, consultants, directors and/or subcontractors in the performance of this Agreement;
 - (b) all personal injury and property damage caused to NB Power, its employees or agents, or to third parties by the negligence of the Station Owner in the performance or non-performance of any of the its obligations under the terms of this Agreement;
 - (c) loss suffered by NB Power or third parties as a result of the commission of any dishonest or fraudulent act by the Station Owner, its employees, agents, consultants, subcontractors and/or directors during the Term of this Agreement; and
 - (d) the negligent failure of the Station Owner, its employees, agents, consultants, subcontractors and/or directors to comply with federal, provincial or local laws.
- 4.2 In no event shall either party to this Agreement be liable for special, indirect, punitive or consequential damages. The Station Owner waives any claim and recourse against NB Power in these instances for such damages. NB Power waives any claim and recourse against Station Owner for such damages. Further, the Station Owner understands and agrees that NB Power will not be held responsible for the improper operation, defects, poor performance, or any other failure of the Charging Stations and waives any claim and recourse against NB Power in these instances.

ARTICLE 5 – TERM AND CANCELLATION

- 5.1 This Agreement shall be effective as of the Effective Date and continue in effect until a Party elects to terminate the Agreement, for any reason and at any time by providing the other Party with prior written notice of at least thirty (30) days.
- 5.2 This Agreement shall automatically terminate immediately and without the requirement for the provision of notice for any of the following reasons:
- (a) Abandonment of the Charging Station(s) by the Station Owner;
 - (b) Insolvency of the Station Owner;
 - (c) Bankruptcy of the Station Owner;
 - (d) Assignment of the Agreement by the Station Owner without the required consent; or
 - (e) the termination or cessation of the e-Charge Network.
- 5.3 Upon termination, expiry or cancellation of this Agreement and in addition to the requirements set out in section 3.7, the Station Owner shall remove, at its expense, its Charging Station(s), along with all advertising, displays, and visual identification from the Charging Stations or other communication tools that could lead the public to believe that it is still participating in the e-Charge Network, with the understanding that this obligation of the Station Owner is restricted to its Charging Stations as well as to any and all advertising and communication tools located on its physical sites or facilities and social media sites.

ARTICLE 6 - ASSIGNMENT

- 6.1 The rights and obligations of the Station Owner hereunder may not be assigned to a third party in whole or in part without the prior written consent of the NB Power unless such assignment is to a subsidiary directly or indirectly wholly owned by the Station Owner; and provided further that the assignee has the financial and operational capacity to take on the Station Owner's obligations hereunder to the same extent as if it was the sole obligor and original party hereto, all without any further action, approval, notice or document being taken, obtained, sent or executed by or to any of the Parties at any time.
- 6.2 Any assignment authorized under this article shall lead to novation of the obligations of the Station Owner toward NB Power after the date of assignment, on the condition that the assignee expressly undertakes in favour of NB Power to assume such obligations.

ARTICLE 7 - REPRESENTATIVES

- 7.1 For the purpose of the administration of this Agreement, NB Power's representative is the Director, Products and Services, NB Power, who has the necessary authority to act for and on behalf of NB Power with respect to any administrative matter relating hereto. For the purpose of serving legal notices or documentation under this Agreement, NB Power's representative is the Chief Legal Officer, NB Power, who has the necessary authority to act for and on behalf of NB Power with respect to any matter relating hereto.
- 7.2 For the purpose of the administration of this Agreement, the Station Owner's representative is the Manager of Transit and Parking Services who has full authority to act for and on behalf of the Station Owner with respect to any matter relating hereto.

ARTICLE 8 – COMMUNICATION AND NOTICE

- 8.1 Any communication or notice relating to this Agreement shall be in writing and validly sent by delivery to the addressee by hand, by mail, or by e-mail to the following addresses:

In the case of NB Power

Attention: EV Product Lead
P.O. Box 2000, 515 King Street, Fredericton, NB E3B 4X1
Telephone: - 1-800-663-6272 Fax: 506-458-4000
E-mail: jouellette@nbpower.com

With a copy to

Attention: Chief Legal Officer
Telephone: 506-458-3372
Fax: 506-458-4319
E-mail: NBPowerLegal@nbpower.com

In the case of the Station Owner

Attention: City Clerk
397 Queen Street, Fredericton, NB E3B 1B5
Telephone: 506-460-2020
Fax: 506-460-2905
E-mail: cityclerk@fredericton.ca

With a copy to

Attention: City Solicitor
Telephone: 506-460-2020
Fax: 506-460-2128
E-mail: legal@fredericton.ca

Any communication or notice so given shall be deemed to be received on the day of its delivery if it is delivered by hand, by fax, or by e-mail, or five (5) days after its mailing if it is sent by mail. Each Party may notify the other Party in the above-mentioned manner of any change of addressee, mailing address or electronic address for the sending of any invoice, communication, or notice.

If the event of a change of representative of either Party hereto, each Party shall inform the other in writing or email within five (5) days following such change.

ARTICLE 9 - CONFIDENTIALITY

- 9.1 Confidential information will include all information that is proprietary or that a reasonable person would in the circumstances understand to be confidential, provided that the obligations of confidentiality set out in this section will not apply to any information which (a) was at the time of disclosure or thereafter became part of the public domain through no act or omission of the Station Owner, (b) became available to the Station Owner from a third party who did not acquire such confidential information under an obligation of confidentiality either directly or indirectly from the disclosing party, which the Station Owner knew that NB Power did not consider such information confidential, which the third party had rightfully obtained the information without restriction on disclosure and such can be demonstrated by written records, (c) was known to the Station Owner at the time of disclosure by NB Power and such knowledge can be demonstrated with written records, or (d) was required to be disclosed by law.
- 9.2 Except as compelled by law, the Station Owner shall not disclose to any third party any confidential information provided by NB Power, or any other party in connection with this Agreement, without prior written consent of NB Power, except to the extent that disclosure is necessary to allow the Station Owner to carry out its duties under this Agreement. The Station Owner shall use its best endeavours to ensure that any such disclosure is treated as confidential by the recipient of such confidential information, by requiring that the recipient of

such information execute a confidentiality agreement in form and substance satisfactory to NB Power.

ARTICLE 10 - FORCE MAJEURE

10.1 Neither Party shall be liable to the other for, or be considered to be in breach of or default under this Agreement because of, any failure or delay in performance by such Party under this Agreement to the extent such failure or delay is caused by or results from any such cause or condition which is beyond such Party's reasonable control, or which such Party is unable to prevent or overcome by exercise of reasonable diligence (any such cause or conditions, a "Force Majeure"), including breach of contract or failure of performance by any person providing services to NB Power.

ARTICLE 11 – ENTIRE AGREEMENT

11.1 This Agreement is the only agreement between NB Power and the Station Owner pertaining to the subject matter hereof and cancels and replaces any prior agreement.

11.2 Any schedule hereto shall be deemed to form an integral part of this Agreement. If the event of inconsistency between the schedules and this Agreement, this Agreement shall take precedence.

ARTICLE 12 - AMENDMENT

12.1 No amendment of the terms hereof shall bind the Parties unless it is set forth in writing and signed by each Party.

ARTICLE 13 – SEVERABILITY

13.1 Should any provision of this Agreement be invalid or unenforceable in any jurisdiction, it shall attach only to such provision in such jurisdiction and shall not in any manner affect or render the other provisions, terms and conditions hereof unenforceable or invalid as this Agreement is not an indivisible whole.

ARTICLE 14 – ARM'S LENGTH NEGOTIATIONS

14.1 The Parties acknowledge that each provision of this Agreement was negotiated in good faith, understood and for good and valuable consideration, agreed to by them and that this Agreement does not in any way or for any purpose

constitute and shall not be deemed to constitute either of the Parties as a partner or agent of the other Party hereto in the conduct of any business or otherwise, nor shall it constitute or be deemed to constitute either of the Parties as members of a joint venture or joint enterprise with the other Party to this Agreement.

ARTICLE 15 – TIME IS OF THE ESSENCE

15.1 Time shall be of the essence of this Agreement and every part thereof.

ARTICLE 16 – REPRESENTATIONS AND WARRANTIES

16.1 Station Owner represents and warrants that its performance of the Agreement will not conflict with any other agreement to which it is bound, and while working on this Agreement, it will not engage in any such services or enter into any agreement in conflict with this Agreement.

ARTICLE 17 – THIRD PARTY BENEFICIARIES

17.1 Except as otherwise set out in this Agreement, this Agreement is not intended for the benefit of third parties and no third party may claim for damages or otherwise to enforce any such benefit.

ARTICLE 18 – SURVIVAL OF PROVISIONS

18.1 Any indemnification, ownership and confidentiality provisions contained in this Agreement shall survive any termination of this Agreement.

ARTICLE 19 – EXECUTION AND COUNTERPARTS

19.1 This Agreement, when executed in electronic or original counterparts by the Parties, will be effective as if one or more originals were executed by the Parties to this Agreement. Further, and to evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Party by electronic transmission.

ARTICLE 20 – GOVERNING LAW

20.1 The Parties agree that this Agreement shall be governed by the laws of the Province of New Brunswick and the federal laws of Canada. The parties submit to the exclusive jurisdiction of the courts of the Province of New Brunswick.

IN WITNESS WHEREOF, THE PARTIES HAVE DULY SIGNED ON THE DATE INDICATED BELOW:

THE CITY OF FREDERICTON

On the ____ day of January, 2024

PER:

Kate Rogers
Mayor

PER:

Jennifer Lawson
City Clerk

NEW BRUNSWICK POWER CORPORATION

On the ____ day of January, 2024

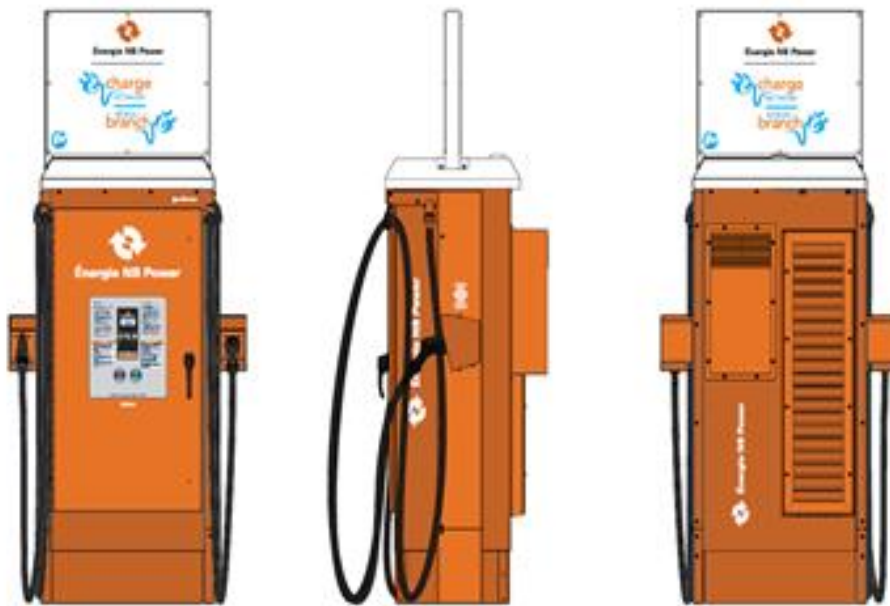
PER:

James Petrie
Chief Legal Officer

PER:

Nicole Poirier
Vice-President Operations

Schedule "A"



PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, Jennifer Lawson, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. THAT I am the City Clerk of the City of Fredericton, one of the parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.
2. THAT the seal affixed to the foregoing instrument purporting to be the seal of the City of Fredericton is the Corporate Seal of the City of Fredericton and was so affixed by order of the City Council.
3. THAT the signature "Kate Rogers" subscribed to the foregoing instrument is the signature of Kate Rogers, the Mayor of the City of Fredericton, and the signature "Jennifer Lawson" subscribed thereto is my signature.
4. THAT the Mayor and City Clerk are officers of the City of Fredericton duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the)
City of Fredericton, in the County)
of York and Province of New)
Brunswick, this ___ day of January,)
2024.)

_____)
A Commissioner of Oaths)
Being a Solicitor)

_____)
Jennifer Lawson