

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
NEW JERSEY ZERO-EMISSION VEHICLE INCENTIVE PURCHASER AGREEMENT

This New Jersey Zero-Emission Vehicle Incentive Program Purchaser Agreement (hereinafter the “ZIP Program Agreement” or “Agreement”) dated as of the Effective Date set forth below is between [REDACTED] **[BOLD CAPS]** (“ZIP Purchaser” or “Purchaser”) having its principal offices at [REDACTED], ^New Jersey _____, and the **NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** (the “Authority”), a body corporate and politic organized and existing under the authority of N.J.S.A. 34:1B-1 et seq., having its offices at 36 West State Street, PO Box 990, Trenton, New Jersey 08625-0990 (collectively the “Parties”).

WITNESSETH:

WHEREAS, in furtherance of the purposes of the Global Warming Response Act P.L. 2007, c. 112, and pursuant to Exec. Order No. 7 (Jan. 29, 2018), the Authority has established the New Jersey Zero-Emission Incentive Program: Voucher Pilot for Medium and Heavy-duty Zero-emission Vehicles (“NJ ZIP” or “ZIP Program”) to subsidize the higher upfront cost of Zero-emission Vehicles, as compared to the upfront costs of their conventional gasoline or diesel-powered alternatives, for use in the State of New Jersey; and

WHEREAS, on January 15, 2021, the Authority approved Phase I of the ZIP Program; and

WHEREAS, on July 13, 2022, the Authority approved Phase II of the ZIP Program; and

WHEREAS, on February 24, 2025, the Authority approved Phase III of the ZIP Program; and

WHEREAS, the Authority has found, on the basis of the information provided in Purchaser’s application for the ZIP Program dated [REDACTED], and any other documentation submitted by Purchaser in support of its application, that Purchaser is eligible to participate in the ZIP Program as evidenced by the Authority issued Purchaser Approval Letter dated ^ _____; and

NOW, THEREFORE, in consideration of the mutual promises and covenants made herein, it is agreed as follows:

1. Definitions. The following terms shall have the following meaning when used in this Agreement, unless the context clearly indicates otherwise.

“**Agreement Term**” means, the Effective Date of this Agreement through the end of the Voucher Compliance Term.

“**DEP**” means the New Jersey Department of Environmental Protection.

“Effective Date” means the date last written below representing the date of execution of this Agreement by the respective Parties.

“LWD” means the New Jersey Department of Labor and Workforce Development.

“Overburdened Communities” means the communities that have been disproportionately impacted by emissions, as defined by N.J.S.A. 13:1D-157 et seq. and which, for the purposes of the ZIP Program, is used interchangeably with the term “environmental justice communities” or “EJ communities” specified in the RGGI Strategic Funding Plan.

“Purchaser Approval Letter” means the Authority-issued letter approving the purchaser to participate as a ZIP Purchaser and attached hereto as **Exhibit A**.

“Purchaser Certificate of Ongoing Obligation” means the form attached hereto as **Exhibit B** to be completed by Purchaser and submitted by Vendor as part of the ZIP Disbursement Package.

“Qualifying Vehicle(s)” means a new zero-emission vehicle(s) approved by the Authority as being eligible under the ZIP Program, and purchased in whole or in part with the Voucher Award provided by the Authority pursuant to the ZIP Purchaser’s ZIP Program Agreement.

“State” means the State of New Jersey.

“Tax Clearance Certificate” means a current New Jersey Business Tax Clearance Certificate not more than 180 days old.

“Vehicle Scrappage” means rendering a vehicle inoperable and available for recycle; at a minimum, to cut a 3-inch hole in the engine block and disable the chassis by cutting the vehicle’s frame rails in half.

“Vendor” means the Authority approved vendor from the Vendor Participation List that is the authorized supplier and provider of Qualifying Vehicle(s) to the ZIP Purchaser.

“Vendor Participation Agreement” means the agreement entered into between an Authority-approved Vendor and the Authority, which allows the Vendor to be listed on the Vendor Participation List and to be selected as a Vendor to provide Qualifying Vehicles to ZIP Purchasers and attached hereto as **Exhibit C**.

“Vendor Participation List” means a list maintained by the Authority identifying New Jersey vendors that have been deemed eligible to participate as approved vendors under the ZIP Program. A Vendor’s participation in the Zip Program does not constitute an endorsement by the Authority of the Vendor, its vehicles and quality of same.

“Voucher Award” means the aggregate amount of all monies to be paid, including all applicable bonus amounts, by the Authority under the ZIP Program.

“Voucher Compliance Term” means the period of three (3) consecutive years following the delivery date of each individual Qualifying Vehicle, as indicated on the Vendor provided bill of lading or other Authority approved documentation evidencing delivery, delivered by the Vendor to ZIP Purchaser. During this term the ZIP Purchaser must comply with the applicable Program requirements and the terms and conditions of this Agreement.

“ZIP Disbursement Package” means the documentation set forth in and attached hereto as **Exhibit D** required to be submitted by the Vendor prior to the expiration of the ZIP Voucher Reservation Term for disbursement of the Voucher Award.

“ZIP Purchaser” means an applicant approved by the Authority to receive a ZIP Program Voucher Award towards the purchase of a Qualifying Vehicle(s).

“ZIP Purchaser Voucher Agreement” or **“ZIP Program Agreement”** means this agreement entered into between the Authority and a ZIP Purchaser, which sets forth the terms, conditions, and obligations applicable to the ZIP Purchaser’s participation in the ZIP Program. Execution of a ZIP Program Agreement by a ZIP Purchaser shall trigger certain compliance obligations for the Vendor selected by that ZIP Purchaser, in accordance with the terms of this Agreement and the Vendor Participation Agreement.

“ZIP Requisition Form” means the form attached hereto as **Exhibit E** to be completed and submitted by the Vendor as part of the ZIP Disbursement Package.

“ZIP Voucher Reservation Term” means the period during which a ZIP Purchaser’s Voucher Award is reserved, beginning from the effective date of this ZIP Program Agreement, and ending upon the earlier of (i) submission of a complete ZIP Disbursement Package including evidence of purchase, delivery, and registration of the Qualifying Vehicle(s), or (ii) eighteen (18) months from the effective date of this ZIP Program Agreement at which point any undisbursed Voucher Award funds shall expire.

2. **Voucher Award and Terms.** The Voucher Award available to Purchaser is up to the maximum amount of \$_____ as provided in the Purchaser Approval Letter attached hereto as **Exhibit A** for previously approved Qualifying Vehicle(s), including any eligible bonuses.

The Voucher Award shall be disbursed by the Authority within six (6) months of receipt of a ZIP Disbursement Package from Vendor, that is satisfactory to the Authority in its sole discretion, and once all other relevant obligations of Purchaser and Vendor required for disbursement under this Agreement and the Vendor Participation Agreement have been met. The Authority reserves the right to request additional information as it deems necessary prior to any disbursement being made. Purchaser and Vendor shall make reasonable and good faith efforts to work together and cooperate to obtain all of the documentation required to be submitted as part of the ZIP Disbursement Package.

The obligation of the Authority to disburse a Voucher Award pursuant to this Agreement shall expire at the end of the ZIP Voucher Reservation Term if Vendor fails to deliver or Purchaser

fails to register the Qualified Vehicle or either party fails to comply with all obligations under this Agreement or the Vendor's Vendor Participation Agreement required for disbursement. Upon the expiration of the ZIP Voucher Reservation Term, all obligations of the Authority under this Agreement including releasing the Voucher Award to the Vendor shall terminate and Purchaser shall have no rights, claims or causes of action of any kind against the Authority. The Authority's obligation to disburse the Voucher Award under this ZIP Program Agreement is contingent upon the availability of funds for such disbursements.

2.1. ZIP Program Purchaser Covenants. The Purchaser covenants and agrees to the following as a condition to receiving the Voucher Award:

- a) Purchaser agrees to register the Qualifying Vehicle(s) in the State of New Jersey prior to the expiration of the ZIP Voucher Reservation Term .
- b) Purchaser agrees to maintain the vehicle registration in the State of New Jersey for any Qualifying Vehicle(s), for the duration of the Voucher Compliance Term.
- c) Purchaser agrees that on an annual basis for the duration of the Voucher Compliance Term, at least 75% of the vehicle miles traveled ("VMT") in the Qualifying Vehicle(s) shall be in the State.
- d) Purchaser agrees to cooperate with the Authority and the Vendor to ensure the Authority-approved telematics device is properly installed and active prior to delivery of any Qualifying Vehicle, and that Purchaser shall maintain such telematics device in working order for the duration of the Voucher Compliance Term.
- e) If applicable, Purchaser agrees to adhere to the Vehicle Scrappage requirement, as defined within this Agreement, of all vehicles in Purchaser's current fleet being replaced by a Qualifying Vehicle, and will provide documentation acceptable to the Authority in its sole discretion of such compliance prior to the end of the ZIP Voucher Reservation Term.
- f) Purchaser shall at all times during the ZIP Voucher Reservation Term satisfy and comply with all conditions and terms as required by this Agreement, including but not limited to, working reasonably and in good faith with Vendor in securing the items required with the ZIP Disbursement Package, as indicated in **Exhibit D**.
- g) Purchaser shall at all times during the ZIP Voucher Compliance Term satisfy and comply with all conditions and terms of this Agreement.
- h) Purchaser shall not sell or return any Qualifying Vehicle(s) purchased in whole or in part with the Voucher Award provided by the Authority for the period of the Voucher Compliance Term without the written consent of the Authority and pursuant to Section 10 of this Agreement.

- i) Purchaser agrees and acknowledges that it shall remain the registered owner of the Qualifying Vehicle(s) for the duration of the Voucher Compliance Term.
- j) Purchaser agrees to insure any Qualifying Vehicles pursuant to all applicable laws.

2.2 Authority Review of Purchaser Compliance with Voucher Award Requirements.

Notwithstanding any other provision in this Agreement to the contrary, the Authority reserves the right to verify Purchaser's ongoing eligibility and compliance with this Agreement, once yearly during the Vehicle Compliance Term. All documentation in support of the Authority's review shall be in form and substance satisfactory to the Authority in its sole discretion. The Purchaser agrees to provide information and data related to the Voucher Award and this Agreement upon the request of the Authority to support such verification including but not limited to the following:

- a) Proof that Purchaser maintained registration of the vehicle in the State of New Jersey continuously during the Voucher Compliance Term;
- b) Proof that Purchaser annually operated at least 75% of VMT in the State of New Jersey;
- c) Odometer reading from Purchaser;
- d) Vehicle maintenance information (if maintenance occurred, what the issue was, if it was covered by warranty, when maintenance occurred, what the service was, and what the cost was) from Purchaser.

VMT verification will be provided through telematics reporting (i.e., GPS tracking). The Purchaser will be required to maintain installation of an Authority approved telematics device to allow auditing of the claimed VMT. The Purchaser will be responsible for the cost of repair of a damaged device and shall promptly notify the Authority of any known defects or damage to the device. This device will provide data on usage patterns during annual telematics audits conducted by the Authority, but the data will not be publicly posted by the Authority.

The Authority reserves the right to request additional information not specifically listed herein, as needed, regarding compliance with Program requirements as outlined within this Agreement. All information and data requested by the Authority to determine compliance shall be in form and substance satisfactory to the Authority in its sole discretion. The Purchaser also agrees to permit the Authority to use any data and information obtained from the Purchaser, as permitted by law, to be utilized in case studies and to be used as necessary to support development of future Authority sponsored programs.

If the Authority removes the Vendor from participation in the ZIP Program for any reason, the Purchaser's approval for the Voucher Award agreed to herein shall survive, if the Purchaser applies for an equivalent or alternative vehicle-class with an alternative approved Vendor within thirty (30) days. The Purchaser will be eligible for up to the maximum Voucher Award provided under Section 2 of this Agreement and shall be responsible for any additional cost above same, with the exact amount calculated based on the newly submitted application. If the Purchaser does

not re-apply in the time indicated above, the funds will be considered expired and returned to the voucher pool.

3. Representations and Warranties of Purchaser.

- a) Grantee (a) has power to enter into this Agreement and has authorized the taking of all action necessary to carry out and give effect to the transactions contemplated by this Agreement; (b) is in good standing and duly qualified to do business in the State of New Jersey; and (c) has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement.
- b) Purchaser represents and warrants that any Qualifying Vehicles purchased in whole or in part with the Voucher Award provided by the Authority and as set forth in this Agreement are not receiving other State or Federal grant funding for the same Qualifying Vehicle(s) that when combined with the Voucher Award exceeds the purchase price of the vehicle.
- c) To the best of Purchaser's knowledge, and upon due inquiry, there is no action or proceeding pending or threatened against Purchaser before any court or administrative agency that might adversely affect the ability of Purchaser to perform its obligations under this Agreement and all consents, authorizations, and approvals of governmental bodies or agencies required in connection with the performance of Purchaser's obligations under this Agreement have been obtained and will be obtained whenever required hereunder or by law.
- d) Purchaser represents and warrants that it (1) is not in violation of any statute governing the LWD or the DEP; (2) it is not in violation of any rule or regulation issued by the LWD or DEP; and (3) it does not have any unpaid fines or penalties or otherwise have any outstanding payment due to the LWD or DEP that is not subject to a payment plan approved by LWD or DEP.
- e) Neither the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by, or conflicts with or results in a breach of the terms, conditions, or provisions of any corporate restrictions or any legal or other restrictions on the business entity or any evidence of indebtedness, agreement, or instrument of whatever nature to which Purchaser is bound, or constitutes a default under any of the foregoing.
- f) All tax returns and reports of Purchaser required by law to be filed have been duly filed and all taxes, assessments, fees and other governmental charges upon Purchaser or upon any of its respective properties, assets, income or franchises which are due and payable have been paid other than those which are presently payable without penalty or interest. Nothing in this subparagraph is intended to preclude Purchaser from exercising its lawful right to contest any tax, assessment, fee or other governmental charge.

- g) All statements, representations and warranties made by Purchaser in its application to the Authority, and in any materials furnished in support of that application were true when made, are true, in all material respects, as of the date hereof, and shall remain and be true and correct during the Agreement Term, it being understood by the Purchaser that all such statements, representations, warranties and materials have been relied upon by the Authority as an inducement to disburse the Voucher Award and shall continue to be relied upon by the Authority in administering the Agreement. Purchaser further understands and agrees that, if, during the Agreement Term, any such statements, representations, warranties or materials become untrue or false, it shall have a duty to immediately notify the Authority in writing of such fact.
- h) The principal office or principal place of business of Purchaser is located at _____ . All of Purchaser's books and records relating to NJ ZIP shall be located at _____ . Purchaser shall notify the Authority in writing of any change in the location of such books and records prior to any such relocation.
- i) Purchaser represents that it has at all times relevant to this Agreement been represented by advisors of its own selection, including, but not limited to, attorneys at law and/or certified public accountants; that it has not relied upon any statement, representation, or warranty provided by the Authority in making its decision to purchase a Qualifying Vehicle(s) and further waives all claims against the Authority arising from the purchase or use of the Qualifying Vehicle(s); that it acknowledges that it is informed by its advisors of its respective rights, duties, and obligations with respect to the transaction which is the subject of this Agreement under all applicable laws, and that it has no set-offs, defenses or counterclaims against the Authority with respect to the transaction which is the subject of this Agreement.
- j) If during the Agreement Term Purchaser becomes aware of any facts, occurrences, information, statements, or events that render any of the foregoing representations or warranties herein untrue or materially misleading or incomplete, Purchaser shall immediately notify the Authority in writing of such facts, occurrences, information, statements, or events.
- k) If compliance is required with N.J.S.A. 52:32-60.1, et seq., which prevents the Authority from certain dealings with businesses engaged in activities related to Belarus or Russia, the Purchaser agrees that by signing this Agreement that the Purchaser may be required to certify whether or not it is appearing on the list of "Specially Designated Nationals and Blocked Persons" promulgated by the Office of Foreign Assets Control (OFAC), <https://sanctionssearch.ofac.treas.gov>, without a license or exemption related to Belarus or Russia, and that if this statement is willfully false, Purchaser shall be subject to

penalty. Additionally, Purchaser agrees that it will affirmatively disclose whether it appears on the OFAC list for any reason, and whether or not it has a license or exemption from OFAC.

- l) Purchaser represents and warrants that they are not a New Jersey State officer or employee prohibited from entering into a contractual agreement with the State of New Jersey to execute any contract or agreement with a value of \$25 or more, made, entered into, awarded or granted by any New Jersey State agency pursuant to N.J.S.A. 52:13D-19. Purchaser understands New Jersey State officer or employee, also includes his or her partners, any other person for the use or benefit of the New Jersey State employee or on his or her account, and any corporation which they control or in which they own or control more than 1 percent of the stock. Purchaser acknowledges that pursuant to The New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12, et seq, State employees are prohibited from representing a party other than the State before any State agency; and representation includes a prohibition against making personal appearances before any State agency on behalf of a party other than the State, writing letters, sending emails, or making phone calls to any State agency on behalf of a third party, and includes a ban on signing any documents or applications submitted to any State agency on behalf of a party other than the State including, but not limited to, this agreement.
- m) In compliance with N.J.S.A. 24:6I-49(b)(2), Purchaser represents and warrants:
 - (i) that it (a) has neither applied for nor received from the New Jersey Cannabis Regulatory Commission either a license to operate as a cannabis cultivator, cannabis manufacturer, cannabis wholesaler, cannabis distributor, cannabis retailer, or cannabis delivery service or that employs a certified personal use cannabis handler to perform work for or on behalf of a cannabis establishment, distributor, or delivery service; and (b) is not a property owner, developer, or operator of a project to be used, in whole or in part, by or to benefit a cannabis cultivator, cannabis manufacturer, cannabis wholesaler, cannabis distributor, cannabis retailer, or cannabis delivery service, or to employ a certified personal use cannabis handler to perform work for or on behalf of a cannabis establishment, distributor, or delivery service pursuant to N.J.S.A. 24:6I-49(b)(2)(b).
 - (ii) Purchaser acknowledges an on-going obligation to report to the Authority any change to this statement.
 - (iii) The Purchaser acknowledges that the issuance of a license to operate as a cannabis cultivator, cannabis manufacturer, cannabis wholesaler, cannabis distributor, cannabis retailer, or cannabis delivery service, or the issuance of a certification to perform work for or on behalf of a cannabis establishment, distributor, or delivery service to a person or entity that has been awarded a State or local economic incentive shall invalidate the right of the Purchaser to benefit from the economic incentive as of the date of issuance of the license or certification; and that the issuance of a license to operate as a cannabis cultivator, cannabis manufacturer, cannabis wholesaler, cannabis distributor, cannabis retailer, or cannabis delivery service, or issuance of a certification to perform work for or on behalf of a cannabis

establishment, distributor, or delivery service at a location that is the subject of a State or local economic incentive shall invalidate the right of the Purchaser property owner, developer, or operator to benefit from the economic incentive as of the date of issuance of the license or certification.

The representations and warranties made in this Section shall survive termination of this Agreement.

4. Publicity. Purchaser grants the Authority and the State the right to use their respective names and logos in public communications announcing or reporting this Agreement and listing their names and logos on the Authority's and State's websites in relation to their participation in the Program. Purchaser may use the State's or Authority's name and logo in public communications announcing or reporting this Agreement or their participation in this Program and on their websites listing their transactions and news only upon prior written consent of the Authority.

5. Records, Access and Maintenance. Purchaser shall establish and maintain during the Voucher Compliance Term, and for five (5) years after the final payment, documents related to the Agreement and such records as are required by the Authority hereof, and all relevant supporting documentation. Records required by the Authority with respect to any questioned costs, litigation or dispute between the Authority and the Purchaser arising out of this Agreement shall be maintained for the time needed to fully resolve any such issue. If for any reason the Authority shall require a review of the records related to the Program, the Purchaser shall, at their own cost and expense, provide all such records to the Authority. Purchaser shall maintain and organize their records related to this Agreement in such form so that, in case of a review of their records or audit, they are able to verify and document the use of the Voucher Award for the Program. Purchaser agree to be subject to review and audit by the Authority, the Office of the State Comptroller, or any other agency or department of the State of New Jersey in relation to this transaction. The provisions of this Section shall survive termination of this Agreement.

6. Purchaser Default. Any one or more of the following shall constitute an Event of Default ("Event of Default") if during the Agreement Term the default shall have continued for thirty (30) calendar days after the earlier of (1) delivery to the Purchaser of written notice thereof from the Authority or (2) the Purchaser's actual or constructive knowledge of such default. However, if such default is capable of cure, but cannot be cured by payment of money or by diligent efforts within such thirty (30) calendar day period, but such diligent efforts are properly commenced within the cure period and the Purchaser is diligently pursuing, and shall continue to pursue diligently, remedy of such failure, the cure period shall be extended for a reasonable period of time as determined by the Authority for Purchaser to cure such default. Notwithstanding the foregoing, if such default is not cured within the initial or extended cure period, the Authority may terminate this Agreement at the conclusion thereof and avail itself of the additional remedies in Section 7 of this Agreement.

- a) If Purchaser has breached or failed to perform in any material respect any term or condition required under this Agreement.

- b) If any representation or warranty made by Purchaser herein, in the application for participation in the Program, or, in any report, certification, financial statement or other instrument furnished in connection with the subject matter of this Agreement is false, misleading or inaccurate in any material respect.
- c) The failure of Purchaser to timely submit the documents, materials, and information required to be submitted pursuant to this Agreement.
- d) The Authority has made a determination of debarment as to Purchaser pursuant to its debarment/disqualification regulations set forth in N.J.A.C. 19:30-2.1 et seq. as amended from time to time.
- e) If the Purchaser has ceased to operate its vehicle for a commercial, industrial or institutional purpose.
- f) If the Purchaser fails to operate the Qualifying Vehicle(s) for at least 75% of the annual VMT in the State of New Jersey.
- g) If the Purchaser sells, assigns, or otherwise transfers its rights and obligations under this Agreement without written approval of the Authority.
- h) If Purchaser sells any Qualifying Vehicle(s) purchased in whole or in part with the Voucher Award provided by the Authority during the Voucher Compliance Term.

7. **Remedies Upon Default.** Upon the occurrence of any Event(s) of Default, the Authority may, in its sole and absolute discretion, do any of the following, alone or in combination, after having first given the defaulting party an opportunity to cure the default in accordance with Section 7 hereof:

- a) Bar the Purchaser from participation in the Program in the future;
- b) Terminate this Agreement;
- c) In the event that the Purchaser defaults within the Voucher Compliance Term for a specific Qualifying Vehicle, the Authority shall recapture the Voucher Award, on a prorated basis per Qualifying Vehicle and its class, inclusive of any bonus, based on the scale below:
 - (i) If Purchaser defaults within (1) year of the Voucher Compliance Term, 100% of the Voucher Award shall be recaptured;
 - (ii) If Purchaser defaults within two (2) years of the Voucher Compliance Term, 60% of the Voucher Award shall be recaptured;

(iii) If Purchaser defaults within three (3) years of the Voucher Compliance Term, 30% of the Voucher Award shall be recaptured.

d) Exercise any other right or remedy that may be available to it under applicable law or under this Agreement.

No remedy referred to in this Agreement is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to in this Agreement or otherwise available under applicable law. The Authority's rights under this Section shall survive termination of the Agreement.

8. Taxes and Other Charges. Purchaser shall pay during the Agreement Term as they become due, all taxes, assessments and governmental charges which may be required by law or contract to be paid by Purchaser. Nothing in this Section 8 is intended to preclude Purchaser from exercising its lawful right to contest any tax, assessment, fee or other governmental charge and, if authorized under law, withholding payment of such tax, assessment, fee, or other governmental charge during the period of such contest.

9. Audits and Inspections. At any time during normal business hours upon written notice and as often as the Authority may reasonably deem necessary, the Purchaser shall make available to the Authority, for examination, and to appropriate State agencies or officials, all of its records with respect to matters related to this Agreement and shall permit the Authority to audit, examine and make excerpts or transcripts from such records. Purchaser shall maintain records to adequately verify all information required under this Agreement. The provisions of this Section shall survive termination of this Agreement.

10. Assignment or Sale. Purchaser may not sell, assign, merge into another entity or otherwise transfer their interests in this Agreement or any Qualifying Vehicle without the consent of the Authority. Unless otherwise indicated by the Authority in writing, any obligations hereunder shall become the obligations of any assignee or successor of the Purchaser.

11. Consequential Damages. The Authority shall not be liable for any incidental, indirect, special or consequential damages of any nature whatsoever, including, but not limited to, loss of anticipated profits, occasioned by a breach of any provision of this agreement or any other agreement entered into by the Purchaser related to the purchase of any Qualifying Vehicle(s), even if apprised of the possibility of such damages.

12. Forbearance Not a Waiver. No act of forbearance or failure to insist on the prompt performance by Purchaser of their obligations pursuant to this Agreement, either express or implied, shall be construed as a waiver by the Authority of any of its rights hereunder. In the event that any provision of this Agreement should be breached by Purchaser and the breach may thereafter be waived by the Authority, such waiver shall be limited to the particular breach waived by Authority and shall not be deemed to waive any other breach.

13. Indemnification. Purchaser covenant and agree to indemnify and hold harmless the Authority, the State of New Jersey and their respective members, agents, officers, employees and servants from all losses, claims, damages, liabilities, and costs whatsoever (including all costs,

expenses and reasonable counsel fees incurred in investigating and defending such losses and claims, etc.), brought by any person or entity, and caused by, related to, arising or purportedly arising out of, or from: (i) Purchaser's participation in NJ ZIP; (ii) the performance by Purchaser of their obligations under this Agreement; (iii) any loss, damage or injury to, or death of, any person occurring at or about or resulting from Purchaser's participation in NJ ZIP; and (iv) any damage or injury to property of Purchaser, or to the agents, servants, employees of Purchaser, caused by the negligence, gross negligence and willful misconduct of any person, except for: losses, claims, damages, liabilities and costs arising from the gross negligence or willful misconduct of the Authority and its respective members, agents, officers, employees and servants. The provisions of this Section shall survive termination of this Agreement.

14. Adherence to Federal, State and Local Laws and Regulations. Purchaser shall comply with all applicable federal, state and local laws and regulations relevant to its participation in NJ ZIP.

15. Applicability of Disqualification Regulations to Entities. The Authority's disqualification/ debarment regulations, which are set forth in N.J.A.C. 19:30-2.1 through 2.7, shall be applicable to any entities with which Purchaser merges, consolidates or combines. In the event that, in accordance with the procedures and provisions set forth in such regulations, the Authority makes a determination to disqualify any such entity from participation in this Program, then, notwithstanding anything contained in the Agreement to the contrary, no Voucher Award payment will be made or a payment already made may be recaptured.

16. Covenant Not to Violate First Amendment

- a) No part of the Voucher Award will be used for any purpose that would cause the Authority's Voucher Award to constitute a violation of the First Amendment to the United States Constitution or the State Constitution. In particular, the Purchaser represents, warrants, certifies and covenants that none of the Voucher Award shall be used for any sectarian instruction or instruction in the tenets of a particular faith, for the purposes of advancement of religion, for religious worship, or in connection with any part of a program of a school or department of divinity for any religious denomination; and the Voucher Award is not intended to be and shall not be made available by Purchaser, or to provide a place for, such instruction, worship or program.
- b) Purchaser agree that they shall not discriminate or permit any discrimination in the conduct of any activity which relates to or is the subject of this Agreement against any person on the grounds of race, color, religion, creed, gender or national origin or in any manner prohibited by the laws of the United States or the State.
- c) Purchaser agree that the Voucher Award shall not be made in conjunction with, or as part of, any activities or services consisting of religious worship, instruction, or expression.
- d) The Purchaser and the Authority acknowledge that this Section 16 of the Agreement is intended to ensure that no portion of the Voucher Award is used for activities or services consisting of religious worship, instruction or expression.

17. Miscellaneous.

- a) **Governing Law.** This Agreement shall be governed by the laws of the State of New Jersey.
- b) **Forum and Venue.** All actions related to the matters which are the subject of this Agreement shall be forumed and venued in a court of competent jurisdiction in the County of Mercer and State of New Jersey.
- c) **Entire Agreement.** This Agreement and its exhibits and any documents referred to herein constitute the complete understanding of the Parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the Parties with respect to the subject matter of this Agreement.
- d) **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid pursuant to applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement, unless the Authority shall in its sole and absolute discretion deem the invalidated provision essential to the accomplishment of the public purposes served by this Agreement, in which case the Authority has the right to terminate this Agreement and all benefits provided to Purchaser hereunder upon the giving of thirty (30) calendar days prior notice as set forth in the following Section hereof.
- e) **Notices.** All notices, consents, demands, requests and other communications which may be or are required to be given pursuant to any term of this Agreement shall be in writing and shall be deemed duly given when personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as each party to this Agreement may hereafter designate in a written notice to the other party transmitted in accordance with this provision.

Authority: New Jersey Economic Development Authority
 36 West State Street
 PO Box 990
 Trenton, New Jersey 08625-0990
 Attention: Dan Fatton, Director Clean Energy
 Telephone: 609-960-4328
 Email: Dan.Fatton@njeda.gov

Purchaser: _____

- f) Amendments or Modifications. This Agreement may only be amended in writing executed by all Parties. Such Amendments or Modifications shall become effective only upon execution of same by all Parties.
- g) Headings. Section headings contained in this Agreement are inserted for convenience only and shall not be deemed to be a part of this Agreement.
- h) Contractual Liability Act. The rights and remedies of the Purchaser under this Agreement shall be subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., the provisions of which are hereby incorporated herein by reference.
- i) Tort Claims Act. The rights and remedies of the Purchaser under this Agreement shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., the provisions of which are hereby incorporated herein by reference.
- j) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. This Agreement may be delivered by telecopier, e-mail, PDF or other facsimile transmission all with the same force and effect as if the same were a fully executed and delivered original manual counterpart.
- k) Controlling Agreement (translated versions). Notwithstanding any translation of this Agreement that the Authority may have provided for convenience to assist in your understanding of your rights and obligations, this English language version is the sole official, legal, controlling, and binding version of this Agreement
- l) Successors and Assigns. This Agreement shall be binding upon the successors and assigns.
- m) No Third-Party Beneficiaries. This Agreement has been entered into solely by and among the parties that have executed this Agreement; except as otherwise expressly provided in this Agreement, this Agreement will not be deemed to create any rights in third parties or create any obligations of any party hereto to any such third parties.
- n) Cross-Default. It is specifically understood and agreed that this Agreement is *cross-defaulted* with any existing assistance and any future assistance provided by the Authority and/or the State to the Purchaser and/or any of their affiliates, including, but not limited to, entities that have common principals. For purposes of this cross-default, a principal of an entity shall be any executive officer, director, or general partner of the entity; any person or other entity directly or indirectly controlling the entity; or a person or other entity directly or indirectly owning or controlling ten percent (10%) or more of the entity's ownership interest. Additionally, for purposes of this cross-default, an affiliate means any entity or person having an overt or covert relationship such that any one of them directly

or indirectly controls or has the power to control another as determined by directly or indirectly owning or controlling ten percent (10%) or more of an entity's ownership interest.

- o) Termination for Convenience. This Agreement may be terminated by the Authority at any time by giving written notice at least thirty (30) calendar days in advance. In such event, Vendor shall be paid under the terms of this Agreement for all requisitions approved by the Authority prior to the effective date of termination. Vendor acknowledges and agrees that it shall have no claim for reliance or otherwise for any funding if the Authority terminates this contract under this paragraph.
- p) Electronic signature on this Agreement shall be deemed to be valid execution and delivery as though an original ink. The parties explicitly consent to the electronic delivery of the terms of the transaction evidenced by this Agreement and affirm that their electronic signatures indicate a present intent to be bound by the electronic signatures and the terms of the Agreement. The electronic signature can be done either by ADOBE Acrobat or any other similar signature software that can be used for electronic signatures or by printing, manually signing, and scanning.
- q) The Authority does not make any representations or warranties as to the quality, reliability, or performance of any Qualifying Vehicle or Vendor participating in the ZIP Program. Purchasers should perform their own research and due diligence before proceeding with any vehicle purchase, including reviewing any potential notices regarding vehicle safety or performance.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective signatories duly authorized as of the date and year last written below (“Effective Date”).

**NEW JERSEY ECONOMIC DEVELOPMENT
AUTHORITY**

By: _____

Name: _____

Title: _____

Date: _____

Purchaser:

^

By: _____

Name: _____

Title: ^Authorized Officer ^Authorized Member
^Owner

Date: _____

SAMPLE

EXHIBIT A
APPROVAL LETTER

SAMPLE

EXHIBIT B
PURCHASER CERTIFICATE OF ONGOING OBLIGATION

SAMPLE

EXHIBIT C
VENDOR PARTICIPATION AGREEMENT

SAMPLE

EXHIBIT D
ZIP DISBURSEMENT PACKAGE

SAMPLE

EXHIBIT E
ZIP REQUISITION FORM

SAMPLE