



## **CENTRAL HUDSON DCFC Incentive Program**

### **Equipment Owner Agreement**

**Revised October 2019**

#### **1. Participation in the CENTRAL HUDSON DCFC Incentive Program (“Program”).**

Upon execution of this Agreement, the Equipment Owner, as defined in the Implementation Manual (“Manual”), is authorized to submit applications for incentives provided in accordance with the requirements of the Program as described in the Manual and this Agreement.

The Equipment Owner hereby acknowledges that it has read and agrees to the terms and conditions in the Manual. Furthermore, the Equipment Owner agrees that its participation in the Program is at all times bound by and subject to the then-current terms of the Manual, which may be amended from time to time without notice, at CENTRAL HUDSON’s sole discretion. Current versions of the Manual can be found on CENTRAL HUDSON’s website at <https://www.cenhud.com/electricvehicles/dc-fast-charging-stations>. Approved incentive applications, however, will be processed to completion under the Terms & Conditions in effect at the time of application to CENTRAL HUDSON.

#### **2. Approval**

Incentives are not payable unless CENTRAL HUDSON has approved the incentive application, the required documentation listed in the Manual, and any other required activities or documentation to be provided by the Equipment Owner.

#### **3. Incentive Payments**

CENTRAL HUDSON will pay the incentive upon the Equipment Owner meeting the requirements of the Program as described in the Manual. This includes, but is not limited to; (1) Agreeing to all Program requirements, (2) Installing all electric vehicle charging equipment (Charging Equipment, as defined in the Manual) in accordance with program rules and all applicable federal, state, and local rules and regulations, and (3) Providing accurate and complete documentation of the purchase and installation of charging equipment to CENTRAL HUDSON, all in accordance with the requirements of the Program as described in the Manual.

Equipment Owner may pre-apply for incentive approval, in which case CENTRAL HUDSON will reserve program funds for the Equipment Owner upon successful review by the Program administrator of the Equipment Owner’s pre-approval application. Equipment Owners shall submit incentive applications to CENTRAL HUDSON by certified mail.

If an application or its required documents are determined to be incomplete, illegible, or missing required information, the Equipment Owner will be notified of the error via email and shall have sixty (60) calendar days from the date of notification to correct any errors. If the errors are not corrected within sixty (60) calendar days, the application will be cancelled and the reserved funds will be released. If an application is submitted but determined to be ineligible, it will be cancelled, the reserved funds will be released, and the Equipment Owner will be notified via email.

Program applications are to be deemed complete at the latter of when the station owner/developer provides proof of a building permit, or when the developer provides a CIAC payment for excess



distribution facilities, if applicable. CIAC payments are to be remitted within 60 days of the utility communicating such a fee. An applicant that fails to remit payment for their CIAC within sixty (60) days shall be removed from the program, barring exceptional circumstances that justify additional time in which the developer and utility may solve engineering difficulties.

#### **4. Operation of Equipment and Data Provision**

The Equipment Owner shall continue to own and operate the Charging Equipment for the entire program period from the date of installation until December 31, 2025. If the Equipment Owner ceases to operate the Charging Equipment before the end of this term, CENTRAL HUDSON will cease payment of the remaining incentive.

As part of the operation of equipment, the Equipment Owner shall provide all data requested in the Manual to CENTRAL HUDSON on a regular basis. For all stations, the Equipment Owner shall either provide CENTRAL HUDSON or its contractors with limited administrative access to the network data (preferred) or by establishing regular recurring data transfers to CENTRAL HUDSON for the duration of the program period. If the Equipment Owner is providing the data directly to Central Hudson, the Data Security Rider and all provisions therein shall apply.

#### **5. Indemnification**

The Equipment Owner shall protect, indemnify, and hold harmless CENTRAL HUDSON against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against CENTRAL HUDSON resulting from, arising out of or relating to the Equipment Owner's participation in the Program, including, without limitation, Equipment Owner's installation of Charging Equipment in association therewith. The obligations of the Equipment Owner under this section shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

#### **6. Insurance Requirements**

Minimum Limits of Liability Coverage: The insurance provided herein shall afford to Owner liability coverage in the following minimum amounts:

- (i) Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, including owned, non-owned, and hired vehicles, with Bodily Injury limits of \$2,000,000 and Property Damage limits of \$2,000,000.
- (ii) Commercial general liability insurance covering claims for injuries to members of the public and damage to property of others arising out of acts or omissions of Contractor or any of its employees, agents or subcontractors, with Bodily Injury limits of \$2,000,000 and Property Damage limits of \$2,000,000, and endorsed for contractual liability.
- (iii) Professional liability insurance in the amount of \$1,000,000, including coverage for errors and omissions caused by the Contractor's negligence in the performance of its duties under this Contract.
- (iv) Workers' compensation and Employer's Liability - providing statutory coverage for the State of New York with Employer's Liability limits of: \$1,000,000 Bodily Injury by Accident, \$1,000,000 Bodily Injury by Disease (Each Employee) and \$1,000,000 Bodily Injury by Disease (Policy Limit).



## **7. No Warranties**

a) CENTRAL HUDSON does not endorse, guarantee, or warrant any particular manufacturer or product, and CENTRAL HUDSON provides no warranties, expressed or implied, for any product or services. The Equipment Owner's reliance on warranties is limited to any warranties that may arise from, or be provided by contractors, Equipment Owners, etc.

b) The Equipment Owner acknowledges that neither CENTRAL HUDSON nor any of its consultants are responsible for assuring that Charging Equipment installed as part of this Program are proper or comply with any particular laws, codes, or industry standards. CENTRAL HUDSON does not make any representations of any kind regarding the results to be achieved by the Program or the adequacy or safety of such measures.

## **8. Limit of Incentive Payments**

It is understood that the Program has limited funds and that incentive reservations are made contingent upon availability of Program funding. Program funding availability is shown on the CENTRAL HUDSON website.

CENTRAL HUDSON will take reasonable steps to update Equipment Owners about funding availability via the incentive application website and to stop accepting applications when funding is exhausted, but CENTRAL HUDSON reserves the right to stop accepting incentive applications at any time. CENTRAL HUDSON will make its best efforts to notify Equipment Owner with reasonable advance notice, seven days where practicable, of any changes in the availability of funding for incentives.

## **9. Termination**

This Agreement is completely voluntary and may be terminated with written notice at any time or for any reason by either CENTRAL HUDSON or the Equipment Owner. Sections 4, 5, 7, 10, 12, 13, and 14 shall survive termination of this Agreement.

## **10. Release by the Equipment Owner**

The acceptance by the Equipment Owner of payment for each incentive shall release Central Hudson from any and all claims and liability the Equipment Owner, its representatives, and assigns might otherwise have relating to the incentive.

## **11. Equipment Owner Approval**

Central Hudson has the right not to allow an Equipment Owner to participate in the Program or to ban any Equipment Owner from future participation in the Program for failure to meet these terms and conditions or other applicable requirements of the Program in addition to any other legal remedies available under law.

## **12. Audit**

The Equipment Owner shall keep, maintain, and preserve written records of any and all books, accounts and records related to this Agreement and the Charging Equipment purchase, installation, and monitoring, including, without limitation, all invoices, proofs of payment, and permitting documents, for a period of three years after receipt of the incentive and provide CENTRAL HUDSON or its designee with the records within ten days of its request. CENTRAL HUDSON shall have the right from time to time and at all reasonable times during this period to inspect and audit any and all books, accounts and records related to this Agreement, the Charging Equipment purchase, installation, and monitoring or reasonably necessary to the performance of an



audit at the office or offices of the Equipment Owner where they are then being kept, maintained and preserved. Any payment made under this Agreement shall be subject to retroactive reduction for amounts included therein that are found by CENTRAL HUDSON on the basis of any audit of the Equipment Owner by the State of New York or CENTRAL HUDSON not to constitute an allowable change or cost hereafter.

### **13. Additional Provisions for Equipment Owner Employees**

a) **Relationship of the Parties.** It is understood and agreed that the personnel furnished by the Equipment Owner to perform the services stipulated in this Agreement, shall be Equipment Owner's employee(s) or agent(s), and under no circumstances are such employee(s) to be considered CENTRAL HUDSON's employee(s) or agent(s), and shall remain the employees of the Equipment Owner, except to the extent required by section 414(n) of the Internal Revenue Code.

The relationship of the parties to this Agreement is that of independent contractors. Nothing in this Agreement shall be construed as creating a partnership, joint venture, employment, agency, legal representation or other relationship between CENTRAL HUDSON and the Equipment Owner for any reason, including but not limited to unemployment, workers' compensation, employee benefits, expense reimbursement, vicarious liability, professional liability coverage or indemnification. Neither party shall have the right, power or authority to obligate or bind the other in any manner not specified in this Agreement.

b) **Notification of Claims/Events.** Equipment Owner expressly acknowledges CENTRAL HUDSON's need to be advised, on an immediate basis, of the existence of any claim or event that might result in a claim or claims against CENTRAL HUDSON, Equipment Owner and/or Equipment Owner's personnel by virtue of any act or omission on the part of CENTRAL HUDSON or its employees. Accordingly, Equipment Owner expressly covenants and agrees to notify CENTRAL HUDSON of any such claim or event, including but not limited to allegations of harassment and/or discrimination immediately upon Equipment Owner's discovery of the same, and to fully and honestly cooperate with CENTRAL HUDSON in its efforts to investigate and/or address such claims or events, including but not limited to, complying with any reasonable request by CENTRAL HUDSON for disclosure of information concerning such claim or event even in the event that this Agreement should terminate for any reason.

### **14. Publicity**

a) The Equipment Owner shall collaborate with CENTRAL HUDSON's Director of Communications to prepare any press release and to plan for any news conference concerning work related to the Program. In addition the Equipment Owner shall notify CENTRAL HUDSON's Director of Communications regarding any media interview in which work related to this Program is referred to or discussed. The Equipment Owner shall NOT speak to any media about the Program before the Program's effective date.

b) The Equipment Owner shall collaborate with CENTRAL HUDSON by participating in surveys and other research efforts that support Program goals.

c) The Equipment Owner shall not use CENTRAL HUDSON's corporate name, logo, identity, any affiliation, or any related logo, without CENTRAL HUDSON's prior written consent.

### **15. Taxes**

CENTRAL HUDSON will be issuing a 1099 for the incentives paid to Equipment Owners. Incentive payments may be considered taxable income by the U.S. Internal Revenue Service and the New York State Department of



Taxation and Finance. It shall be the sole responsibility of the Equipment Owner to seek professional advice and determine the tax consequences of this incentive.

**16. Conflicting Terms**

This Agreement may not include all the terms and conditions as set forth in the Manual. The Equipment Owner acknowledges in the event of a conflict between the terms of this Agreement and the terms of the Manual, the Manual shall supersede.

The Equipment Owner hereby indicates its acceptance of and agreement to the foregoing by causing its duly authorized representatives to execute this Agreement in the space provided below.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name and Title \_\_\_\_\_



Attachment A

## **GENERAL TERMS AND CONDITIONS**

The following General Terms and Conditions are made a part of and incorporated within the Equipment Owner Agreement

**1. INTERPRETATION** - The terms and conditions contained in the Purchase Order shall govern the rights, remedies and obligations of Seller and Purchaser as to the goods to be furnished pursuant to the agreement set forth in the Purchase Order, and no other representations, understandings, agreements, reservations or disclaimers, whether oral or written, or express or implied, including any which may be contained in Seller's quotation, acknowledgment, sales order or invoice, shall apply to the transaction to which the Purchase Order relates. A specific provision stated elsewhere in the Purchase Order shall take precedence over a provision contained in these General Terms and Conditions if there is a conflict between such provisions.

**2. ACCEPTANCE AGREEMENT** - Seller's commencement of work on the goods subject to the Purchase Order or shipment of such goods, whichever occurs first, shall be deemed acceptance of the Purchase Order. Any acceptance of the Purchase Order shall constitute acceptance of the express General Terms and Conditions set forth herein. Any proposal of Seller for additional or different terms, including, but not limited to, any attempt by Seller to vary in any manner any of the terms set forth in the Purchase Order (the "Offer"), is hereby objected to and rejected. Any proposal of Seller for additional or different terms shall not operate as a rejection of the Offer unless such proposal materially varies the terms of the Offer. A material variation of the terms of the Offer shall include a variation by Seller in the description, quantity, price or delivery set forth therein. Upon acceptance by Seller of the Offer, the Purchase Order shall become the valid and binding agreement of the parties with respect to the subject matter thereof.

**3. MATERIAL SAFETY DATA SHEET** - As required by OSHA 29CFR 1910.1200, a Material Safety Data Sheet (MSDS) shall be provided for all applicable materials being purchased.

**4. INSPECTION OF GOODS** - Final inspection of the goods purchased hereunder shall be on Purchaser's premises. Payment for the goods delivered hereunder shall not constitute acceptance thereof. Purchaser shall have the right to inspect such goods and to reject any or all defective or non-conforming goods, or those supplied in quantities greater than called for in the Purchase Order. Such defective or non-conforming goods, or those supplied in excess of the quantities called for may, at the election of Purchaser, be returned to Seller at Seller's expense. Such expenses include, but are not limited to, expenses relating to unpacking, examining, handling, repacking, and reshipping such goods. Alternatively, Purchaser may require Seller, at Seller's expense, to remove from the premises of Purchaser defective or non-conforming goods, or those supplied in excess of the quantities called for. In the event Purchaser receives goods whose defects or non-conformity are not immediately apparent on examination, Purchaser reserves the right to require replacement, as well as payment of any applicable damages, within a reasonable period of time following discovery of any defect or non-conformity. Nothing contained in the Purchase Order shall relieve in any way the Seller from the obligation of testing, inspection and quality control.

**5. TERMINATION FOR CONVENIENCE OF PURCHASER** - Purchaser reserves the right to terminate the Purchase Order, or any part thereof, at any time for its sole convenience by delivering to Seller a written notice to such effect and stating that it is a notice of termination. Such termination shall be effective upon Seller's receipt of such notice. Upon receipt of any such notice of termination, Seller shall immediately stop all work hereunder, and shall immediately cause all of its suppliers or subcontractors to cease all work related to the Purchase

Order. In the event of such termination for convenience, Purchaser shall pay Seller a reasonable termination charge based upon a percentage of the Purchase Order price reflecting the percentage of the work performed prior to receipt of such notice of termination, plus Seller's actual, verifiable direct costs incurred in closing-out such work. Seller shall not be paid for any work done after receipt of such notice of termination, or for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided.

**6. TERMINATION FOR CAUSE** - Purchaser may terminate the Purchase Order, or any part thereof, at any time for cause by delivering to Seller a written notice to such effect and stating that it is a notice of termination. Such termination shall be effective upon Seller's receipt of such notice. For the purposes of this Section, "cause" shall exist if Seller defaults in the observance or performance of any of the terms, covenants or conditions of the Purchase Order which are required to be observed or performed by Seller, or otherwise fails to comply with or breaches any of the terms, covenants or conditions of the Purchase Order. In addition, "cause" shall also exist in the event that there are late deliveries, or deliveries of goods or provisions of services which are defective or which do not conform to the Purchase Order, or in the event that Seller, for whatever reason, fails to provide Purchaser, upon request, with adequate assurance of due performance by Seller. In the event of such termination for cause, Seller shall be liable to Purchaser for any and all damages sustained by Purchaser by reason of the default which gave rise to such termination.

**7. WARRANTY** - Seller expressly warrants that all goods furnished under the Purchase Order shall conform to all specifications and applicable standards. Seller expressly warrants that all such goods will be new and will be free from defects in material or workmanship. Seller warrants that all such goods will conform to the specifications, drawings and any statements made in advertisements for such goods. Seller warrants that all such goods will conform to any statements made on the containers or labels on such containers, or advertisements for such goods and that any such goods will be adequately contained, packaged, marked and labeled. Seller warrants that all goods furnished hereunder will be merchantable and will be safe and appropriate for the purpose, and fit for the use, for which goods of that kind are normally used. If Seller knows or has reason to know the particular purpose for which Purchaser intends to use such goods. Seller warrants that such goods will be fit for such particular purpose. Seller warrants that goods furnished hereunder will conform in all respects to any samples provided by Seller. Purchaser's inspection, test, acceptance or use of, or payment for, the goods furnished hereunder shall not affect the Seller's obligation under this Warranty, and the warranties made herein shall survive any inspection, test, acceptance, use and payment by Purchaser. Seller's Warranty shall be applicable to Purchaser, its successors, assigns and customers, and to users of products sold by Purchaser to the extent that they incorporate the goods that are the subject of the Purchase Order. Seller agrees to replace or correct defects of any goods not conforming to the foregoing Warranty promptly, without expense to Purchaser, when notified of such non-conformity by Purchaser, provided Purchaser elects to provide Seller with the opportunity to do so. In the event of failure of Seller to so correct defects in or replace non-conforming goods promptly, Purchaser, after reasonable notice to Seller, may make such corrections or replace such goods and charge Seller for the cost incurred by Purchaser in so doing. There shall be available to Purchaser, in addition to and not in lieu of the foregoing warranties, any rights, remedies and warranties available at law or in equity.

**8. FORCE MAJEURE** - Owner is not responsible for project, contract, and/or work stoppage, damages or delay in performance and/or lack of performance due to causes beyond its control, including, but not limited to, acts of God, fire, terrorism, war (declared or undeclared), epidemics, material and/or labor shortages, insurrection, acts (or omissions) of Contractor's or its employees, servants, subcontractors, suppliers or agents, any act (or omission) by any governmental authority, strikes (includes strikes by owner's employees, by third-party



owners, third-parties, servants, principals, subcontractors and/or agents), labor disputes, transportation, material and/or labor shortages, or vendor non-performance. At owner's election, the delivery or performance date may be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay.

**9. INDEPENDENT CONTRACTOR** - In the event that the Purchase Order requires or contemplates performance of work to be done by Seller's employees, or persons under contract to Seller, on Purchaser's property, or the property of Purchaser's customers, Seller agrees that all such work shall be performed as an independent contractor, and that the persons doing such work shall all be independent contractors and shall not be considered employees of the Purchaser. Seller shall indemnify and save harmless and defend Purchaser, and its directors, officers, employees, agents and customers, from and against any and all claims, costs (including attorney's fees) and liabilities ensuing out of any performance of work hereunder on Purchaser's property or that of its customers.

**10. INSURANCE** - In the event that the Purchase Order requires or contemplates performance of work to be done by Seller's employees, or persons under contract to Seller, on Purchaser's property, or property of Purchaser's Customers, Seller agrees prior to the commencement of such work to obtain from reputable insurers acceptable to Purchaser, and to maintain throughout the performance of such work, insurance of the types, amounts and coverages as are set forth in Central Hudson Gas & Electric Corp. Table of Contractor Minimum Insurance Requirements. The insurance requirements in this Table are hereby incorporated by reference and made a part hereof.

**11. INDEMNIFICATION** - The Seller shall indemnify and hold harmless the Purchaser and all of its directors, officers, agents and employees from any loss, damage, liability,

cost (including reasonable attorneys' fees) and expense, on account of damage to property and injuries, including death, to all persons, including Seller's employees, arising or in any manner growing out of the performance of any work or the supplying of any goods or materials under the Purchase Order and, at Purchaser's option, shall defend, at Seller's own expense, any suits or other proceedings (including claims that Seller's goods or materials infringe upon any United States Letters Patent or Trademarks), brought against Purchaser and its directors, officers, agents and employees, or any of them, on account thereof, and shall pay all expenses and satisfy all judgments which may be incurred by or rendered against them or any of them in connection therewith.

**12. SET-OFF** - All claims for monies due or to become due from Purchaser hereunder shall be subject to deduction or set-off by the Purchaser by reason of any claim arising out of the Purchase Order or any other transaction with Seller. Seller hereby irrevocably and unconditionally waives all right of set-off that it may have under contract (including the Purchase Order), applicable law or otherwise with respect to any property, funds or monies of Purchaser at any time held by or in the possession of Seller.

**13. SHIPMENT** - If, in order to comply with Purchaser's required delivery, it becomes necessary for Seller to ship by a more expensive means than specified in the Purchase Order, any increased transportation costs resulting therefrom shall be paid for by Seller unless the necessity for such rerouting or expedited handling has been caused by Purchaser.

**14. DELIVERY** - Purchaser's production schedules are based upon delivery by Seller to the Purchaser by the date specified on the face of the Purchase Order. Time is of the essence with respect to the Purchase Order, and if delivery of items is not completed by the time promised, Purchaser shall have the right to terminate the



Purchase Order by notice, effective when received by Seller, as to items not yet shipped not yet rendered and to purchase substitute items from other sources and charge Seller with any loss incurred thereby.

**15. DELAY OF DELIVERY** - If Seller determines for any reason that Seller cannot meet the delivery date specified on the face of the Purchase Order, Seller shall promptly notify Purchaser in writing of such delay and the expected duration of the same.

**16. LIMITATION ON PURCHASER'S LIABILITY-STATUTE OF LIMITATIONS** - In no event shall Purchaser be liable to Seller or any other person, firm or entity for loss of anticipated profits or for incidental or consequential damages. Purchaser's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from the Purchase Order or from the performance or breach thereof shall in no case exceed the price allocable to the goods, or the unit thereof which gives rise to the claim. Purchaser shall not be liable for penalties of any description. No action resulting from or relating to any breach on the part of Purchaser as to the goods delivered hereunder, or otherwise relating to the Purchase Order, shall be commenced after the expiration of one year after the cause of action has accrued.

**17. QUANTITIES** - Shipments must equal amounts ordered by Purchaser unless otherwise agreed in writing by Purchaser.

**18. CHANGES** - Purchaser shall have the right to make, from time to time and without notice to any sureties, factors or permitted assignees, changes as to packing, testing, destinations, specifications, designs, and delivery schedules. Seller shall immediately notify Purchaser of any increases or decreases in costs caused by such changes, and an equitable adjustment in prices or other terms hereof shall be agreed upon in a written amendment to the Purchase Order.

**19. ROUTING INSTRUCTIONS** - Any losses accruing from deviation from the Purchaser's routing instructions shall be the sole responsibility of the Seller.

**20. EVIDENCE OF SHIPMENT** - Seller shall forward to Purchaser, with the invoice, the express receipt or bill of lading, signed by the carrier, evidencing the fact that shipment has been made.

**21. SPECIFICATIONS** - Any specifications, drawings, notes, instructions, engineering notices, or technical data expressly referred to in the Purchase Order shall be deemed to be incorporated herein by reference as if fully set forth herein.

**22. TITLE TO DRAWINGS AND SPECIFICATIONS** - Purchaser shall at all times retain title to all drawings and specifications furnished by Purchaser to Seller and intended for use in connection with the Purchase Order. Seller shall use such drawings and specifications only in connection with the Purchase Order, and shall not disclose such drawings and specifications to any person, firm or entity other than Purchaser or Seller's employees and subcontractors, for use solely in connection with the Purchase Order, or to governmental inspectors upon request therefor. Seller shall, upon Purchaser's request or upon completion of the Purchase Order, promptly return all drawings and specifications to Purchaser.

**23. TITLE** - Except as otherwise provided in the Purchase Order, title passes to Purchaser upon delivery of the subject goods or materials at Purchaser's premises.

**24. NO WAIVER** - No act or omission on the part of Purchaser in connection with the transaction which is the subject of the Purchase Order, including, but not limited to, payment for any goods, the failure of Purchaser to assert any right or remedy available to it in the Purchase Order or delay in exercising any right thereunder shall



affect, or constitute a waiver of, any right or remedy of Purchaser contained in the Purchase Order or otherwise available to Purchaser at law or in equity. The remedies provided for in the Purchase Order are cumulative and are in addition to and not exclusive of any remedies available at law or in equity.

**25. NOTICES** - Except as otherwise provided herein, any notice, invoice or other communication which is required by the Purchase Order shall be telecopied, transmitted by electronic mail, or sent by certified or registered mail, return receipt requested, addressed to the respective parties at their addresses as set forth on the Purchase Order.

**26. SEPARABILITY CLAUSE** - Any provisions of the Purchase Order that are prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall not invalidate the remaining provisions thereof.

**27. ENTIRE AGREEMENT** - The Purchase Order, including these General Terms and Conditions and any documents referred to therein, constitute the entire agreement between the parties with respect to the subject matter of the Purchase Order and supersedes and cancels any prior arrangements or agreements. No amendment or waiver of any provision of the Purchase Order, nor consent to any departure by either party therefrom, shall in any event be effective unless the same shall be in writing and signed by the other party thereto, and, in such event, any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

**28. ASSIGNMENT** - Seller shall be prohibited from delegating any duties under or assigning the Purchase Order or any rights or claims under the Purchase Order, unless Seller obtains the prior written consent of Purchaser, and any such attempted delegation or assignment without first obtaining such consent shall be null and void. Purchaser is under no obligation to consent to any request for such delegation or assignment. In the event that Purchaser does so consent, the assignee must agree to assume all of Seller's responsibilities hereunder, and Seller must remain liable to Purchaser in the event such permitted assignee fails to perform pursuant to the Purchase Order. In the event of any assignment, all claims for monies due or to become due from Purchaser hereunder shall be subject to deduction by Purchaser for any set-off or claim arising out of this or any other of Purchaser's transactions with the Seller, whether such set-off or claim arose before or after any such assignment by the Seller.

**29. VENUE AND LAW GOVERNING** - This Purchase Order shall be governed by and construed in accordance with the substantive laws of the State of New York, without regard to the conflict of law principles thereof. Any legal action or proceeding with respect to the Purchase Order or any document related thereto shall be brought in the courts of Dutchess County, State of New York, and, by execution and delivery of the Purchase Order, Seller and Purchaser each hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. Seller and Purchaser each hereby irrevocably waives any objection, including, without limitation, any objection to the laying of venue or based on the grounds of forum non-convenience, which it may now or hereafter have to the bringing of any such action or proceeding in such jurisdiction. Seller and Purchaser agree to accept service of process by certified or registered mail, return receipt requested, for any claim arising hereunder.

**30. BINDING EFFECT** - The Purchase Order shall be binding upon and inure to the benefit of Seller and Purchaser, and their respective successors and permitted assigns.



**31. SAFETY AND HEALTH** - The Seller of the goods s provided under the Purchase Order certifies that said goods are provided in compliance with all applicable federal, state, and local occupational safety and health requirements.

**32. EQUAL OPPORTUNITY** - This Purchase Order shall comply with the provisions of Executive Order 11246, entitled the "Equal Opportunity Rules and Regulations of the United States Secretary of Labor" relating thereto and by the provisions of the Equal Opportunity Clause and Certification of Non-Segregated Facilities. This Purchase Order shall further agree to comply with any and all other applicable federal and New York State Laws relating to equal opportunity and prohibiting discrimination.

The Equal Employment Opportunity Clauses set forth in 41 Code of Federal Regulations Chapter 60-1.4, 60-250.5 and 60-741.5 are hereby incorporated by reference.

The Executive Order 13201 Employee Notice Clause set forth in 29 Code of Federal Regulations Chapter 470 is hereby incorporated by reference.

Executive Order 13201 (Beck Notice) Contractor shall comply with all provisions of said Executive Order and rules, regulations, and orders of the Secretary of Labor related to "Notification of Employee Rights Concerning Payment of Union Dues and Fees".

Attachment B

## Data Security Rider

### I. General

- (1) This Data Security Rider (the “Rider”) to \_\_\_\_\_ [insert Contract name] (the “Contract”) shall apply to [insert name of contractor] (“Contractor”) in the event that Contractor is granted or has access, in any way, to the Confidential Information, Personally Identifiable Information, or Data of Central Hudson Gas & Electric Corporation ( “Owner”). Unless defined herein, capitalized terms are defined in the Contract. This Rider is incorporated by reference into the Contract and made a part hereof. If there is a conflict between the Contract or any Scope of Services and this Rider, this Rider shall prevail with respect to the conflicting provision.
- (2) Definitions:
- i. “Cardholder Data” means a User’s individual credit or debit card cardholder name, number, expiration date, the Card Security Code / Card Verification Value / Card Validation Code / Card Authentication Value, or Card Identification Number / Card Authentication Value 2 / Card Validation Code 2 / Card Verification Value 2.
  - ii. “Confidential Information” has the meaning set forth in the Contract.
  - iii. “Customer Information” means information relating to or capable of attribution to Owner’s customer including, but not limited to a customer’s Central Hudson account number, name, address, zip code, phone number, email address, social security number, bank account number or routing number, credit card information, driver’s license number, billing or usage data, enrollment in a low income or similar program, health status, including being on life support, meter GPS coordinates, or information regarding a customer’s personal residence, such as square footage, smart appliances in residence, home network internet protocol address or other Personally Identifiable Information.
  - iv. “Cyber Event” means (a) any occurrence in an information system or network that has, or may potentially result in, unauthorized access to or processing, corruption, modification, transfer or disclosure of any Confidential Information, Customer Information or Personally Identifiable Information or (b) a violation of an explicit or implemented Contractor security policy.
  - v. “Cyber Incident” means (a) the loss or misuse (by any means) of Owner’s Confidential Information, Customer Information or Personally Identifiable Information, or if Confidential Information, Customer Information or Personally Identifiable Information is reasonably believed to have been acquired without valid authorization; (b) the inadvertent, unauthorized and/or unlawful access, processing, corruption, modification, transfer, disclosure, sale or rental of Confidential Information, Customer Information or Personally Identifiable Information; or (c) any other act or omission that compromises the security, confidentiality, integrity, availability, or privacy of any Confidential Information, Customer Information or Personally Identifiable Information.

- vi. “Data” means all: (i) drawings, plans, maps, diagrams, charts, calculations, sketches, illustrations, designs and design layouts (collectively the “Drawings”), (ii) written technical specifications, design criteria, engineering data and all other information and data relating to the Services and/or Inputs, (iii) computer programs, software and source codes, (iv) operating and maintenance manuals with respect to the Services and/or Inputs, and (v) any other written or otherwise recorded data and information relating to the Scope of Work which are either annexed to or referred to in the Contract or this Rider or required to be supplied by the Contractor pursuant to the terms of the Contract or this Rider or which Owner may reasonably require in connection with the construction, installation, use, operation, maintenance, repair, replacement or upgrading of the Services and/or Inputs.
- vii. “Personally Identifiable Information” (“PII”) means and includes any information that can be uniquely associated with a specific Owner customer or employee and includes, without limitation, customer account number, name, address, phone number, electric or gas usage, billing amounts, social security numbers, driver’s license number, credit card number, debit card number, or banking information.
- viii. “Services” has the meaning set forth in the Contract or Scope of Work.
- ix. “Subcontractor” means any individual, firm or corporation engaged directly or indirectly by the Contractor in performance of any part of the Services, including any individual, firm or corporation that is an affiliate, agent, or assignee of Contractor.
- x. “Users” means an electric or natural gas customer of Owner.

## **II. Privacy and Data Security**

- (1) Confidential Information, Customer Information, PII and/or Data shall at all times remain the sole property of Owner. Nothing in this Rider will be interpreted or construed as granting Contractor any license or other right under any patent, copyright, trademark, trade secret, or other proprietary right or any right to assert any lien over or right to withhold from Owner any Confidential Information, Customer Information, PII and/or Data of Owner.
- (2) The Contractor shall provide annual security awareness training to any individual who has access to PII. Upon Owner’s request, the Contractor shall promptly provide to Owner evidence that individuals with access to any PII have received such training.
- (3) The Contractor must provide 20 business days prior written notice to Owner if a new Subcontractor will be engaged by Contractor to support the Services that the Contractor is providing to Owner. The Contractor will assist Owner in providing information, in form and substance sufficient to Owner, regarding the state of the internal control environment of the Subcontractor to enable Owner to perform any security assessment that Owner deems necessary. Owner reserves the right to reject any proposed Subcontractor if the Subcontractor’s internal control environment does not meet Owner’s requirements.
- (4) The Contractor shall ensure that any Subcontractor is bound by terms and obligations at least as stringent as those set forth in the Contract and this Rider. Owner reserves the right to audit such terms and obligations and to determine, in its sole discretion, whether or not the obligations and terms are sufficient.

- (5) At any and all times during which Contractor or Subcontractor is in possession of or processing Owner's Confidential Information, Customer Information or Personally Identifiable Information, Contractor and its Subcontractors shall:
- i. Implement and maintain appropriate and reasonable security controls and measures in place to protect and safeguard the Confidential Information, PII and/or Customer Information of Owner and its Users and employees from loss, theft or unauthorized disclosure, access or use. The Contractor and its Subcontractors shall secure its computer systems, network, and devices using a defense-in-depth approach, compliant with industry recognized best practices or frameworks (e.g., NIST SP 800-53, ISO 27001 / 27002, COBIT, CIS Security Benchmarks, Top 20 Critical Controls, etc.).
  - ii. Have appropriate and reasonable privacy controls and measures to protect Owner's Customer Information in a manner that meets industry recognized best practices or frameworks (e.g., DOE Data Guard Energy Data Privacy Program, AICPA Generally Accepted Privacy Principles, NISTIR 8062, ISO 29100, etc.).
  - iii. Comply with all applicable privacy, data security and data protection laws, regulations, including without limitation the New York State Public Service Commission Orders to which it or Owner is subject; Contractor shall not, by act or omission, place Owner in violation of any privacy or security law, regulation or order known by Contractor to be applicable to Owner.
  - iv. Promptly notify Owner of any material change(s) to the Contractor's security policies, procedures, controls or measures.
  - v. Safely secure or encrypt Confidential Information, PII and Customer Information during storage or transmission.
  - vi. Store Confidential Information, PII and Customer Information only within the boundaries of the United States.
  - vii. Except as may be necessary in connection with providing Services, not store Confidential Information, PII and Customer Information on removable devices or media.
  - viii. Not back up Confidential Information, PII and Customer Information to the cloud without Owner's prior written approval.
- (6) If the Contractor uses a service provider or co-location data center, the Contractor shall do so only if in compliance with the complementary user entity controls stated in the service provider's or co-location's SSAE 16 audit report.
- (7) If the Services provided include the use of the Contractor's hosted site(s), a privacy statement shall be present on the site that, at a minimum, includes the same language as in the Owner's privacy statement located at: <http://www.centralhudson.com/privacy/index.aspx>.
- (8) To the extent that the Contractor or Subcontractor processes Users' credit card transactions as part of providing the agreed upon Services, the following requirements shall apply with respect to the Cardholder Data:
- i. Contractor, for itself and its Subcontractor(s), represents that Contractor and its Subcontractor(s) are presently in compliance, and will remain in compliance, with the Payment Card Industry Data Security Standard ("PCI DSS"), and all updates to PCS DSS,

developed and published jointly by American Express, Discover, MasterCard and Visa (“Payment Card Brands”) for protecting Cardholder Data.

- ii. Contractor, for itself and its Subcontractor(s), acknowledge that Cardholder Data is owned exclusively by Owner, credit card issuers, the relevant Payment Card Brand, and entities licensed to process credit and debit card transactions on behalf of Owner, and further acknowledges that such Cardholder Data may be used solely to assist the foregoing parties in completing a transaction, supporting a loyalty program, providing fraud control services, or for other uses specifically required by law, the operating regulations of the Payment Card Brands, or this Rider.
- iii. Contractor, for itself and its Subcontractor(s), agrees that, in the event of a Cyber Incident arising out of or relating to Contractor or Subcontractor’s premises or equipment contained thereon, Contractor and Subcontractor shall provide full cooperation and access to its premises, books, logs and records by a designee of the Payment Card Brands to the extent necessary to perform a thorough security review and to validate Contractor’s or Subcontractor’s compliance with the PCI DSS. Contractor shall indemnify and hold Owner harmless against all claims, actions, damages, losses, costs and expenses (including reasonable attorneys’ fees) arising from or relating to any Cyber Event or Cyber Incident to the extent caused by Contractor’s breach of this Rider.

- (9) If Owner wishes to discontinue the use of a hosted system and retrieve all of Owner’s Confidential Information and Data, the Contractor and its Subcontractors shall ensure administrative interfaces and open APIs exist that provide access to all Confidential Information and Data. With sufficient additional technical services resources and sufficient available bandwidth, all Confidential Information and Data will be retrieved within 15 business days by Owner and Owner will authorize the Contractor and Subcontractor to delete the Confidential Information and Data from within the hosted system in a manner consistent with the Contract.

### III. **System Development**

- (1) To the extent that Contractor provides the Services, the Contractor and its Subcontractors shall comply with the following requirements:
  - i. Establish policies and procedures that ensure the application system has been designed, built and implemented in a secure manner according to industry recognized best practices or frameworks (e.g., Build Security in Maturity Model (BSIMM) benchmarks, Open Group ACS Trusted Technology Provider framework, NIST, OWASP, etc.).
  - ii. Establish policies and procedures that ensure data security has been designed, built, and implemented into the application system according to industry recognized best practices or frameworks (e.g., CDSA, MULITSAFE, CSA Trusted Cloud Architectural Standard, FedRAMP, CAESARS, etc.).
  - iii. Establish policies and procedures that ensure the application system has been properly tested, including the development of a security test plan that defines an approach for testing or otherwise establishing that each of the security requirements has been met.

- iv. Perform vulnerability assessment and penetration test on the application system to identify any security issues prior to the application system being placed into production. The Contractor or its Subcontractors verify that appropriate and reasonable action will be taken to mitigate any security issues identified prior to the system being placed into production.
  - v. Upon Owner's request, the Contractor and each Subcontractor shall promptly provide the results of any vulnerability assessment and penetration test.
  - vi. Establish policies and procedures that ensure the application system has a proper change management and patch management process that includes applying, testing, and validating the appropriate changes / patches before being placed in the production system.
  - vii. Upon Owner's request, the Contractor and each Subcontractor shall promptly provide a self-certification letter to Owner verifying that the application system meets the security requirements stated in this Rider, that all security activities have been performed, and all identified security issues have been documented and resolved.
- (2) Contractor warrants that the application system contains no virus, Trojan, worm, undocumented shutdown mechanism or other code or feature which is intended, or is known by Contractor as likely, to disable, damage, destroy, deny access to or degrade the performance of the application system, or Confidential Information, Data or other information technology resource. Contractor warrants that the application system contains no backdoors or other feature that is intended to allow Contractor or someone else to gain unauthorized or surreptitious access to the application system or Confidential Information, Data or other information technology resources of Owner. Contractor agrees to indemnify and hold Owner harmless from any claims, damages, causes of action, costs and expenses arising out of or related to any breach of the warranty set forth in this paragraph.

#### **IV. Incident Reporting**

- (1) It shall be presumed that the consequences of a virus, worm, Trojan, hacker intrusion or similar network security breach is not beyond the control of the Contractor or its Subcontractors.
- (2) The Contractor shall remain responsible for any Cyber Event or Cyber Incident in relation to its or its Subcontractor's obligation set forth in the Contract and this Rider.
- (3) The Contractor shall notify Owner of a Cyber Event or Cyber Incident based on the Notification Table set forth below, including on behalf of their Subcontractors. Upon Owner's request, the Contractor shall utilize and pay the cost for a computer forensic expert to investigate the incident that is either provided by the Contractor or Owner.

Classification	Description	Notification By
Low	<ul style="list-style-type: none"> <li>System unavailable affecting 5% of Users.</li> </ul>	Within 24 hours upon identification
Medium	<ul style="list-style-type: none"> <li>System unavailable affecting 10% of Users.</li> <li>Cyber Event as defined in the Data Security Rider.</li> </ul>	Within 8 hours upon identification
High	<ul style="list-style-type: none"> <li>System unavailable affecting 15% of Users.</li> <li>Cyber Incident as defined in the Data Security Rider.</li> <li>User request, complaint or other communication regarding potential misuse or unauthorized access to User's customer information.</li> </ul>	Immediately upon identification

- (4) The Contractor and its Subcontractors shall establish policies and procedures to properly investigate a Cyber Event or Cyber Incident and be willing to work with the Owner's forensic examiner.

#### V. Cybersecurity Insurance

For all Contracts that involve the supply of or provision of information technology services including cloud services or if Contractor has access to any Confidential Information, Customer Information or Personally Identifiable Information of Owner, Contractor shall secure, provide and maintain during the term of the Contract, an insurance policy (technology errors and omissions / cyber insurance), with a minimum policy limit of \$3,000,000 per occurrence, that provides coverage for any and all liabilities, damages, claims, losses, costs and expenses, of any kind, that may be incurred by Owner resulting from or related to:

- (1) any act, error or omission or negligence related to Contractor's technology and/or professional services;
- (2) intellectual property infringement arising out of software and/or content;
- (3) breaches of security;
- (4) violation or infringement of any right to privacy, or any breach of federal, state, local or foreign security and/or privacy laws or regulations;
- (5) theft, damage, destruction, or corruption of any data of Owner or any employee, or customer of Owner, including without limitation, unauthorized access, unauthorized use, identity theft, theft of Personally Identifiable Information, or confidential corporate information, transmission of a computer virus or other type of malicious code; and
- (6) participation, including a denial of service attack on a third party.

Such insurance must cover all of the foregoing without limitation if caused by Contractor or its Subcontract agent, assign or affiliate, including an independent contractor working on behalf of the Contractor, in performing Services under this Contract and for six (6) years (either as a policy in force or



extended reporting period) after this Contract is terminated or after completion of the Work provided for herein, whichever is later.

**VI. Right to Audit**

- (1) Upon Owner's request, the Contractor shall provide reasonable evidence that the controls of the Contractor and its Subcontractors have the proper security controls in place to protect Owner's Confidential Information, Customer Data and PII and to ensure that the Contractor's / Subcontractor's information systems related to the Services are operating effectively to ensure availability. The evidence may include, as determined by the Owner, third party audit reports, such as the AICPA's SSAE 16 SOC 1 and SOC 2 (all 5 of the trust principles) reports or a penetration test report, or a certification letter from a third party verifying that that the Contractor and its Subcontractor are in compliance, such as an ISO 27001 or PCI DSS certification letter.
- (2) Owner may also, at its discretion, perform a security controls audit or penetration testing of the Contractor upon notice to the Contractor not less than 30 business days. The Contractor shall include in each of its Contracts with each of its Subcontractors a right for the Owner to audit their services. The Contractor is responsible for addressing any user entity control requirements and any control deficiencies or findings that are noted in these audit reports.