

**ELECTRIC CHARGING STATION  
PARTICIPANT AGREEMENT  
COMMERCIAL ELECTRIFICATION PILOT PROGRAM**

This Electric Charging Station Participant Agreement, Commercial Electrification Pilot Program (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, (the "Effective Date") by and between THE EMPIRE DISTRICT ELECTRIC COMPANY, a corporation organized and existing under the laws of the State of Kansas and having its principal place of business in Joplin, Missouri, ("Liberty-Empire" or "Company") and \_\_\_\_\_, a \_\_\_\_\_ a \_\_\_\_\_, organized and existing under the laws of the State of \_\_\_\_\_ ("Participant").

**W-I-T-N-E-S-S-E-T-H**

WHEREAS, Liberty-Empire customers are interested in adopting new technologies, including opportunities that exist within the electric vehicle market;

WHEREAS, increasing accessibility to the electric vehicle market fits within Liberty-Empire's corporate sustainability goals because electric vehicles emit significantly less pollutants than gasoline counterparts and the electricity used to power electric vehicles has lower carbon intensity than fossil fuels such as gasoline and diesel;

WHEREAS, Liberty-Empire has developed and launched a pilot program aimed at increasing the general public's awareness of the advantages of electric vehicle ownership (the "Pilot Program");

WHEREAS, Participant is the [check which]  owner  lessee/sublessee of that certain real property located at \_\_\_\_\_ (the "Property") and, as a responsible steward of the environment, desires to have installed Company-owned electric vehicle service equipment (i.e., electric vehicle charging station(s) together with all related improvements, utilities, equipment, and accessories (the "EVSE")) in the location(s) shown on the Site Plan in Exhibit A attached hereto, pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

**1. Contract Documents.** This Agreement, together with the following documents, comprise the Contract Documents containing the terms and conditions for the installation and operation of the EVSE on the Property

- Participant's Liberty Commercial Electrification Program Enrollment Application, dated \_\_\_\_\_, attached hereto as Exhibit B; and
- Construction Cost Estimate ("CCE"), signed and dated \_\_\_\_\_ by Participant, attached hereto as Exhibit C.

Any conflict in terms and conditions between this Agreement and the other Contract Documents, if any, will be resolved in favor of this Agreement.

**2. Applicable Tariff.** This Agreement arises from and is subject to the decision and order of the Missouri Public Service Commission ("PSC") issued in Docket No. 2020-0390 and made effective January 29, 2022 (the "Pilot Program Order"); and to Schedule CEPP of the Company's Tariff (together with all other provisions of the Company's Tariff, P.S.C. Mo. No. 6, comprising the "Tariff"), and as the Tariff may be revised from time-to-time by order of PSC. The currently approved Schedule CEPP is attached hereto as Exhibit D. All terms and conditions set forth in Schedule CEPP is incorporated herein as if fully set forth herein. Any conflict between the terms of the Tariff and this Agreement or any other Contract Document will be resolved in favor of the Tariff.

**3. Liberty-Empire's Duties.** Liberty-Empire shall (1) per the Site Plan and its rights and obligations under this Agreement, furnish, install, operate, and maintain the Liberty-branded EVSE specified in the Exhibit E attached hereto; and (2) provide electric utility services for the EVSE. Liberty-Empire will charge the Participant for the installation and use of the EVSE in accordance with Schedule CEPP.

**4. Participant's Duties.** Participant shall: (1) maintain access to and conditions at the Site in accordance with Schedule CEPP; (2) ensure reliable access to wireless internet service at the location of the EVSE to ensure remote reading of the EV charger's consumption for use in billing; and (3) pay all charges due and owing to Liberty-Empire in accordance with Schedule CEPP. Participant hereby grants, or shall cause the Property owner to grant, Liberty-Empire and its agents

access to on, over and under the Property for the purposes of installing, operating, maintaining and removing the ESVE, and shall execute, or cause the Property owner to execute, a recordable easement and access agreement if requested by Liberty-Empire. Participant shall allow, or shall cause the Property owner to allow, access by governmental authorities to the Property for their inspections and approvals of the EVSE. Participant has communicated with its insurers and lenders, if any, who have consented to Participant entering into this Agreement. Participant hereby verifies that any and all representations and warranties made in each of the Contract Documents prior to the Effective Date are true and accurate as of the Effective Date.

**5. Ownership of EVSE.** Liberty-Empire will retain all ownership rights to the EVSE installed by Liberty-Empire at the Property.

**6. Operation.** Liberty-Empire shall operate the EVSE in accordance with commercially reasonable practices. If any governmental license or permit is required for the proper and lawful use of the EVSE, Liberty-Empire will obtain and thereafter maintain the same and shall comply with all of the terms and conditions thereof. Participant agrees to reasonably cooperate with Liberty-Empire to the extent necessary for Liberty-Empire to obtain any such licenses or permits.

**7. Critical Peak and Major Weather Event Charging Restrictions.** Participant acknowledges that Liberty-Empire's provision of service during the Remaining Pilot Term (as defined in Schedule CEPP) may be interrupted, curtailed, suspended, or be subject to reductions in voltage. The occurrence of such events will be subject to the Rules and Regulations of the Tariff, including but not limited to the Company Energy Curtailment Plan and Continuity of Service; and the Force Majeure Section of this Agreement.

**8. Marketing.** The parties understand and agree that Liberty-Empire may, at its option and expense, have the EVSE adorned with Liberty-Empire branding. Liberty-Empire may use the Participant's name to publish and promote to the public the availability of EVSE and EV charging at the Property. Any marketing efforts made by either party beyond those described in the preceding sentences that includes the other's name or logo in any printed materials or other promotional activities or websites must be submitted in advance to the other party for review and prior written approval.

**9. Maintenance and Repair.** Liberty-Empire shall maintain the EVSE in good working order, ordinary wear and tear excepted. Participant shall maintain the common area improvements immediately surrounding the EVSE in good working condition, ordinary wear and tear excepted, and shall promptly notify Liberty-Empire of any problems it is aware of related to the EVSE, including but not limited to any unsafe, inoperable, or damaged equipment. In addition, Participant shall promptly report all claims and/or incidents related to the EVSE to Liberty-Empire. Maintenance by Participant shall include, but not be limited to, pavement maintenance and snow removal services.

**10. Risk of Loss.** Liberty-Empire shall have the responsibility for the repair or replacement of the EVSE that is damaged, destroyed or stolen during the Term.

**11. Term and Termination.** This Agreement will commence on the Effective Date and continue for the Remaining Pilot Term. The rights and obligations of the parties upon the expiration of Remaining Pilot Term will be in accordance with Schedule CEPP. Liberty-Empire may terminate this Agreement prior to the expiration of the Remaining Pilot Term on thirty (30) days' notice to Participant if Liberty-Empire terminates the Pilot Program. Upon termination, Liberty-Empire shall remove the EVSE as soon as reasonably possible, as determined by Liberty-Empire.

**12. Assignment and Sublease.** This Agreement and the rights conferred hereunder will not be assigned by either party except with the prior written consent of the other party in each instance, and such consent shall not be unreasonably withheld, conditioned or delayed.

**13. Insurance.** Participant shall at all times during the Term procure, maintain and keep in force insurance with an insurance company authorized to transact business in the state where the Property is located, a commercial general liability insurance policy covering the operation and use of the Property, in each case affording protection in an amount of not less than Two Million Dollars (\$2,000,000.00) for each occurrence and Four Million Dollars (\$4,000,000) in the aggregate for injury to or death of one or more persons. The policy must include customary coverages for liability arising from premises, operations, independent contractors and liability assumed under an insured contract. The policy shall name Liberty-Empire (including its parent, affiliates, subsidiaries, officers, directors, employees, agents and assigns) as additional insured whereby Participant may not cancel or reduce the insurance without first giving Liberty-Empire at least thirty (30) days

prior written notice. Participant further covenants to deposit with Liberty-Empire a certificate of such insurance and, upon request, a certificate of any such policy renewal thereafter.

Liberty-Empire shall at all times during the Term procure, maintain and keep in force insurance with an insurance company authorized to transact business in the state where the Property is located, a commercial general liability insurance policy covering the operation and use of the Property, in each case affording protection in an amount of not less than Two Million Dollars (\$2,000,000.00) for each occurrence and Four Million Dollars (\$4,000,000) in the aggregate for injury to or death of one or more persons. The policy must include customary coverages for liability arising from premises, operations, independent contractors and liability assumed under an insured contract. The policy will name the Participant (including its officers, directors, employees, agents and assigns) as additional insured whereby Liberty-Empire may not cancel or reduce the insurance without first giving Participant at least thirty (30) days prior written notice. Liberty-Empire further covenants to deposit with Participant a certificate of such insurance and, upon request, a certificate of any such policy renewal thereafter.

**14. Participant's Default.** The events constituting default on the part of Participant hereunder include, but are not limited to: (a) Participant's failure to pay its electric service utility invoice in accordance with the Tariff, (b) any breach or failure of Participant to observe or perform any of its other obligations hereunder and the continuance of such default for thirty (30) days after written notice to Participant of the existence of such default, (c) the insolvency of Participant or the making of any assignment by Participant for the benefit of creditors, or the consent of Participant to the appointment of a trustee or receiver, or the appointment without its consent of a trustee or receiver for Participant or for a substantial part of its property, the institution by or against Participant of bankruptcy, reorganization, arrangement or insolvency proceedings, (d) Participant closes its business at the Property or otherwise ceases to be a Liberty-Empire customer in good standing, (e) Participant is in breach of any representation, warranty or covenant made in this Agreement: or (f) Participant is in default under any of the other Contract Documents. Upon the occurrence of any such default, Liberty-Empire may, at its option and without notice or demand to Participant, declare this Agreement in default and thereupon enter the Property without process of law or liability for suit, action or other proceeding by Participant to remove any EVSE that Liberty-Empire provided in connection with this Agreement. Any repossession of Liberty-Empire-provided EVSE will not bar an action for a deficiency by Liberty-Empire against Participant, and the bringing of an action or the entry of judgment against Participant will not bar Liberty-Empire's right to repossess the equipment. Should Liberty-Empire be forced to initiate legal action against Participant for damages to Liberty-Empire-provided EVSE, failure to pay for services or any other breach of this Agreement, Participant shall pay all costs and expenses incurred by Liberty-Empire in bringing legal action, including all out-of-pocket expenses such as attorney's fees. All remedies provided in this paragraph are cumulative and may be exercised concurrently or separately.

**15. No Representations or Warranties.** Liberty-Empire makes no representations regarding manufacturers, dealers, contractors, materials or workmanship of the EVSE. Further, Liberty-Empire makes no warranty, whether express or implied, including without limitation the implied warranties of merchantability and fitness for any particular purpose, use, or application of the products and services under the Pilot Program. Participant agrees that Liberty-Empire has no liability whatsoever concerning (1) the quality, safety or installation of such products and services, including their fitness for any purpose, (2) the workmanship of any third-party products or services, or (3) the installation or use of the products and services. Participant hereby waives any and all claims against Liberty-Empire, its parent companies, directors, officers, employees, or agents, arising out of activities conducted by or on behalf of Liberty-Empire under the Pilot Program.

**16. Indemnity.** To the fullest extent permitted by law, Participant shall indemnify, defend, and hold harmless Liberty-Empire, including its parent company, subsidiaries, affiliates, and their respective shareholders, officers, directors, employees, agents, representatives, successors, and assigns, from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs, or expenses, including without limitation reasonable attorneys' fees, court costs and cost of appellate proceedings, resulting from (1) any breach of the representations, warranties, covenants, or obligations of Participant under this Agreement; (2) any act or omission of Participant, whether based upon negligence, strict liability, or otherwise, in connection with the performance of this Agreement; or (3) any third party claims of any kind, whether based upon negligence, strict liability, or otherwise, arising out of or connected in any way to Participant's performance or nonperformance under this Agreement. This indemnification obligation will not apply to the extent that such injury, loss, or damage is caused by the sole negligence or willful misconduct of Liberty-Empire.

To the fullest extent permitted by law, Liberty-Empire shall indemnify, defend, and hold harmless Participant, including its

affiliates, and their respective officers, directors, employees, agents, representatives, successors, and assigns, from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs, or expenses, including without limitation reasonable attorneys' fees, court costs and cost of appellate proceedings, resulting from (1) any breach of the representations, warranties, covenants, or obligations of Liberty-Empire under this Agreement; (2) any act or omission of Liberty-Empire, whether based upon negligence, strict liability, or otherwise, in connection with the performance of this Agreement; or (3) any third party claims of any kind, whether based upon negligence, strict liability, or otherwise, arising out of or connected in any way to Liberty-Empire's performance or nonperformance under this Agreement. This indemnification obligation will not apply to the extent that such injury, loss, or damage is caused by the sole negligence or willful misconduct of Participant.

**17. Limitation of Liability.** NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, NO PARTY SHALL BE LIABLE TO ANOTHER FOR ANY CONSEQUENTIAL OR INDIRECT DAMAGES ARISING FROM BREACH OF THIS AGREEMENT EXCEPT THAT THE FOREGOING SHALL NOT APPLY TO OR LIMIT SUCH PARTY'S INDEMNITY OBLIGATIONS FOR THIRD PARTY CLAIMS UNDER THIS AGREEMENT, OR LIABILITY ARISING FROM SUCH PARTY'S WILLFUL MISCONDUCT.

**18. Miscellaneous.**

**18.1 Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument.

**18.2 Captions.** The captions and subject headings are for convenience of reference only and will not affect the meaning or construction to be given any of the provisions of this Agreement.

**18.3 Additional Documents.** The parties agree to execute and deliver, or cause to be executed and delivered, such additional documents and to take such additional actions as may be required to effectively carry out the transactions contemplated by this Agreement.

**18.4 Survival.** All representations and warranties made by the parties contained in this Agreement will survive the execution, delivery and performance of this Agreement and all other documents provided for by this Agreement.

**18.5 Interpretation.** All parties have assisted in the preparation of this Agreement and have had the opportunity to make changes to the language used herein. In interpreting the meaning of any language contained herein, the rule of construction that ambiguous language will be construed against the party drafting the document will not apply.

**18.6 Gender.** All pronouns and any variations thereof will be deemed to refer to the masculine, feminine or neutral, singular or plural, as the identity of the parties and context may require.

**18.7 Notices.** Any notice, demand, request, consent, approval or other communications required or permitted to be given pursuant to this Agreement to either party by the other party shall be in writing and shall be either hand-delivered or sent either by registered or certified mail, return receipt requested, first class postage prepaid, addressed to the party to be notified at the following address:

If to Liberty-Empire, then to:

Diana Carter, Director of Legal Services  
602 S. Joplin Avenue  
Joplin, MO 64801

If to Participant, then to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notices given as provided above will be deemed given (i) upon delivery, if hand-delivered, or (ii) upon the date shown on the return receipt, if sent by registered or certified mail, or courier. The address to which notices are to be given to may be changed from time to time by a party by providing written notice to the other party of the new address.

**18.8 Modification.** No provision contained herein may be modified, amended or waived except by written agreement signed by the party to be bound thereby.

**18.9 Binding Effect.** This Agreement will inure to the benefit of, and will be binding and enforceable upon, the parties, their respective successors and permitted assigns.

**18.10 Partial Invalidation.** If any portion of this Agreement is held invalid, illegal or unenforceable by a court of competent jurisdiction, such determination will not impair the enforceability of the remaining terms and provisions contained herein. In such event, this Agreement will be construed and interpreted as if such invalid, illegal or unenforceable terms were limited to the extent whereby such terms would be valid, legal and enforceable. If such limitation is not possible, this Agreement will be construed and interpreted as if such invalid, illegal or unenforceable terms were severed and not included herein.

**18.11 Entire Agreement.** This Agreement, together with its Exhibits, constitute the full and complete understanding and entire agreement of the parties and supersede any and all other agreements, oral or written, with respect to the subject matter contained herein.

**18.12 Governing Law.** This Agreement will be governed by and construed pursuant to the laws of the State of Missouri applicable to contracts made and to be performed in the State of Missouri without giving effect to the principles of conflict of laws of the State of Missouri. All parties to this Agreement do hereby agree and submit to personal jurisdiction in Jasper County, Missouri, for the purpose of any judicial proceeding and do hereby waive any and all rights to contest jurisdiction and venue in Jasper County, Missouri, and any claim that such jurisdiction or venue is invalid.

**18.13. No Joint Venture.** The Agreement will not be construed as creating a partnership, joint venture, agency relationship, franchise or association, nor will this Agreement render Liberty-Empire and Participant liable as partners, co-venturers, or principals.

**18.14. Force Majeure.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation (a) acts of God; (b) flood, fire or explosion; (c) war, invasion, riot or other civil unrest; (d) embargoes or blockades in effect on or after the date of this Agreement; (e) national or regional emergency; and (f) any other event which is beyond the reasonable control of such Party (each of the foregoing, a "**Force Majeure Event**"); provided, however, that a party whose performance is affected by a Force Majeure Event shall give prompt notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to minimize the effects of such Force Majeure Event. During the Force Majeure Event, the non-affected Party may similarly suspend its performance obligations until such time as the affected Party resumes performance. Economic hardship of either Party will not constitute a Force Majeure Event under this Agreement.

IN WITNESS WHEREOF, the parties have signed this Agreement the day and year aforesaid, acknowledging that each has read this Agreement and fully understand the terms and obligations set forth hereinabove and that each is duly authorized to enter into this Agreement.

**THE EMPIRE DISTRICT ELECTRIC COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_

name of participant

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

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

Title: \_\_\_\_\_

**EXHIBITS**

- Exhibit A      Site Plan
- Exhibit B      Participant's Liberty Commercial Electrification Program Enrollment Application
- Exhibit C      Construction Cost Estimate
- Exhibit D      Schedule CEPP of Company Tariff
- Exhibit E      EVSE Specifications