



**American Honda Motor Co., Inc.**  
1919 Torrance Boulevard  
Torrance, CA 90501-2746  
Phone (310) 783-2000

Dear Honda Clarity Owner,

Honda would like to invite you to join the SmartCharge New York program offered by Consolidated Edison Company of New York, Inc. (“Con Edison”). The purpose of the SmartCharge New York program is for Con Edison to understand how much, when, and where electric vehicle customers charge their vehicles and to incentivize off-peak charging. If you agree to participate, Honda will share your Clarity vehicle’s charging data with Con Edison. In return for sharing your vehicle’s charging data, you will have the opportunity to earn rewards from Con Edison. If you are interested in joining the SmartCharge New York program, please complete and sign this Participation Agreement, along with the Con Edison Terms and Conditions, and return both to [SCNYClarity@coned.com](mailto:SCNYClarity@coned.com) by hitting submit.

Thank you,  
American Honda Motor Co., Inc.

**PARTICIPATION AGREEMENT**

**SMARTCHARGE NEW YORK PROGRAM (HONDA CLARITY)**

THIS AGREEMENT CREATES A BINDING LEGAL AGREEMENT BETWEEN YOU AND AMERICAN HONDA MOTOR CO., INC. (“AHM”) AND INCLUDES AN ARBITRATION PROVISION UNDER WHICH CERTAIN CLAIMS MAY NOT BE BROUGHT IN COURT OR DECIDED BY A JURY. PLEASE READ THIS AGREEMENT CAREFULLY. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, INCLUDING THE ARBITRATION PROVISION, DO NOT SIGN IN THE BOX BELOW OR PARTICIPATE IN THE PROGRAM.

**I HEREBY CONSENT TO THE COLLECTION, USE AND TRANSMISSION OF MY HONDA CLARITY’S VEHICLE IDENTIFICATION NUMBER (VIN) AND CHARGING DATA BY AMERICAN HONDA MOTOR CO., INC., CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., AND THEIR RESPECTIVE AFFILIATES AND SERVICE PROVIDERS FOR THE PURPOSES DESCRIBED IN THIS AGREEMENT.**

**SIGNATURE:** \_\_\_\_\_

**FIRST NAME:** \_\_\_\_\_

**LAST NAME:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**VIN (17 Digits):** \_\_\_\_\_

**HONDALINK EMAIL ADDRESS\*:** \_\_\_\_\_

**\*located under account settings in HondaLink app**



**By signing above, I acknowledge that I have read this Participation Agreement (this “Agreement”) and agree to participate in the SmartCharge New York Program (Honda Clarity) (the “Program”) on the following terms:**

**Program Description: Eligibility**

Consolidated Edison Company of New York, Inc.’s (“Con Edison”) SmartCharge New York program seeks to incentivize off-peak charging in the Con Edison service territory. Through the Program, Con Edison is able to utilize information provided directly from vehicles enrolled in the Program via cloud-based technology to understand how much, when and where electric vehicle customers charge their vehicles, and to calculate Program incentives for Program participants.

To participate in the Program, your Honda Clarity must be registered with HondaLink® and enrolled in the “Remote Features” available through HondaLink®.

For more information about registering and enrolling in HondaLink<sup>®</sup>, please visit: <https://www.hondatechtutor.com/clarity/2019/clarity-electric/audio-and-connectivity/hondalink-register--enroll/>.

### **How It Works**

If you agree to participate, AHM, either directly or through an affiliate or service provider, will provide your Honda Clarity's vehicle identification number (VIN) and Charging Data (defined below) to Con Edison for every charging session commencing up to one hundred twenty (120) days prior to the start of the Program, and ending (i) when the Program is terminated, (ii) you withdraw from the Program, or (iii) Con Edison withdraws you from the Program (the "Data Sharing Period"). "Charging Data" means the following data generated by your Honda Clarity and transmitted to AHM or its affiliates: start date and time of charging session, duration of charging session, average charging power level (kW), total charging energy (kWh), start and end state of charge, and GPS coordinates (latitude and longitude) of charging session. After the Data Sharing Period, AHM will no longer provide your VIN and Charging Data to Con Edison. However, the Charging Data provided to Con Edison during the Data Sharing Period may remain in the computer systems of AHM, Con Edison and each of their respective affiliates and service providers, where they can be associated with your Honda Clarity's VIN.

### **What You're Consenting To**

By signing this Agreement, you are consenting to allowing AHM, Con Edison and their respective affiliates and service providers:

- to receive and store your Honda Clarity's VIN;
- to receive and store your Charging Data;
- to use your Charging Data for their internal research purposes; and
- with respect to Con Edison, to use your Charging Data to (i) research the charging patterns of electric vehicles (EVs) in the context of both "unmanaged" charging and under a managed charging program, (ii) administrate and operate a customer "smart charging program" and calculate incentives associated with charging vehicles by time of use under such a program, (iii) market, evaluate, analyze and improve the SmartCharge New York Program, and (iv) prepare and present general, aggregated or anonymized results and information about any of Con Edison's programs to third parties, including governmental entities such as the New York State Public Service Commission.

### **Withdrawal From The Program**

You can withdraw from the Program at any time by sending an e-mail to [smartcharge@ahm.honda.com](mailto:smartcharge@ahm.honda.com). In addition, Con Edison may withdraw you from the Program pursuant to the terms of Con Edison's SmartCharge New York Program (Honda Clarity) Terms and Conditions. Within three (3) days of receipt of notice from you or Con Edison of your withdrawal from the Program, AHM will stop communicating your new Charging Data to Con Edison. You understand that the Charging Data provided to Con Edison prior to the date of your

withdrawal may remain in the computer systems of AHM, Con Edison and each of their respective affiliates and service providers, where they can be associated with your Honda Clarity's VIN. In addition, you understand that, notwithstanding your withdrawal from the Program, AHM will continue to collect and store your Charging Data in accordance with the American Honda Vehicle Data Privacy Policy, which is available via the Vehicle Data Privacy link in the footer of [www.honda.com](http://www.honda.com).

**NOTE REGARDING RE-ENROLLMENT:** If Con Edison re-enrolls you in the Program within three (3) months of your date of withdrawal, AHM will start communicating your Charging Data to Con Edison as if you had not withdrawn from the Program, with no further action required on your part. If Con Edison re-enrolls you in the Program after three (3) months of your date of withdrawal, you will need to complete and sign a new Honda Participation Agreement.

**Disclaimer of Liability\***

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL AHM OR ITS AFFILIATES BE LIABLE FOR DAMAGES OF ANY KIND INCURRED BY YOU OR ANY PERSON DRIVING OR OCCUPYING YOUR HONDA CLARITY RESULTING OR ALLEGEDLY RESULTING FROM THIS AGREEMENT OR YOUR PARTICIPATION IN THE PROGRAM, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES, WHATEVER THE CAUSE AND EVEN IF AHM OR ANY OF ITS AFFILIATES IS OR BECOMES AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT THAT THE ABSOLUTE BAR TO DAMAGES SET FORTH ABOVE IS DECLARED TO BE ILLEGAL OR UNENFORCEABLE, AHM'S (INCLUDING ITS AFFILIATES) ENTIRE LIABILITY FOR DAMAGES OF ANY KIND RELATING TO THIS AGREEMENT OR THE PROGRAM SHALL BE LIMITED TO FIVE DOLLARS (\$5.00). THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE. SOME STATES RESTRICT LIMITATIONS AND/OR EXCLUSIONS OF LIABILITY SO YOU MAY HAVE RIGHTS NOT SET FORTH HEREIN.

**Notifications: Notice\***

All notifications or notices under this Agreement may be provided to you by the email address you have provided to AHM, and all notifications are deemed given when AHM sends the email or message. All notifications or notices required under this Agreement to be provided to AHM and questions or comments that you have about this Agreement or the Program may be sent to [smartcharge@ahm.honda.com](mailto:smartcharge@ahm.honda.com) and are deemed given when received. Notifications or notices under this Agreement to AHM require that an additional copy is sent to Honda North America Law Division, 700 Van Ness Avenue, Torrance, CA 90501.

**Amendments\***

AHM can amend this Agreement with respect to your future participation in the Program by written notice to you and your continued participation in the Program shall constitute your agreement to such amendment.

## **Arbitration\***

**Please read this arbitration provision carefully. It affects rights that you may otherwise have. It provides for resolution of most disputes through arbitration instead of court trials and class actions. Arbitration is more informal than a lawsuit in court, uses a neutral arbitrator instead of a judge or jury, and discovery is more limited. Arbitration is final and binding and subject to only very limited review by a court. This arbitration provision shall survive termination of this Agreement.**

### Binding Arbitration

This arbitration provision is intended to be interpreted broadly to encompass all disputes or claims arising out of or relating to this Agreement or your participation in the Program (including the validity or invalidity and scope of the agreement to arbitrate) and your relationship with AHM. AHM will attempt to resolve any disputes or claims to your satisfaction and ours. If, however, a matter arises that cannot be resolved promptly between you and AHM, you agree that any dispute or claim arising out of or relating to this Agreement or your participation in the Program and your relationship with AHM or any affiliate, including their respective employees, agents, contractors or service providers, (whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory) shall be resolved by binding arbitration, except that either of you or AHM may take claims to small claims court if they qualify for hearing by such a court. The obligation to arbitrate under this provision shall extend to any claims by you against any affiliate, officer, director, agent, employee, or contractor of AHM. This arbitration provision shall not apply to claims of patent, trademark, or copyright infringement or misappropriation of trade secrets.

### Arbitration Procedures

If the parties are unable to resolve any dispute or claim through informal means, either party may initiate binding arbitration of such dispute or claim by sending notice demanding arbitration to the other party. Any demand for arbitration must be made within the shorter of the applicable statute of limitations or one year after the cause of action has accrued. The arbitration of any dispute or claim shall be administered by the American Arbitration Association (“AAA”) and shall be conducted before a single arbitrator pursuant to the applicable rules established by the AAA. The AAA rules and information about arbitration and fees are available online at [www.adr.org](http://www.adr.org). If the AAA shall be unavailable or decline to administer the arbitration, and the parties do not agree on a substitute, you and AHM each agree that a substitute administrator or arbitrator shall be appointed by the court. You and AHM each agree that this Agreement evidences a transaction in interstate commerce and this arbitration provision will be interpreted and enforced in accordance with the U.S. Federal Arbitration Act. Any arbitration shall be held in Los Angeles County, California, unless the AAA or the arbitrator shall determine that venue in such city is unreasonably burdensome, in which case the AAA or the arbitrator shall select a venue that is not unreasonably burdensome to both you and AHM. The arbitration will be conducted in the English language. An arbitrator may award on an individual basis any relief that would be available in a court, including injunctive or declaratory relief to the extent required to satisfy your individual claim, and must follow and enforce this Agreement as a court would, except that the arbitrator shall have no authority to award punitive, exemplary or multiple damages. Any arbitration shall be confidential, and neither you nor AHM may disclose the existence, content or results of any arbitration, except

as may be required by law or for purposes of enforcement of the arbitration award. Judgment on any arbitration award may be entered in any court having proper jurisdiction.

#### Costs of Arbitration

Arbitration fees shall be determined in accordance with the arbitration rules. Each party will bear the fees and expenses of its own attorneys, experts, witnesses and preparation and presentation of evidence at the arbitration. However, a party may recover any or all fees and expenses from another party if the arbitrator, applying applicable law, so determines. Except for claims determined to be frivolous, AHM agrees not to seek an award of attorneys' fees in arbitration even if such an award is otherwise available under applicable law.

#### Class Action Waiver and Jury Waiver

You and AHM each agree that any proceeding, whether in arbitration or in court, will be conducted only on an individual basis and not on a class, mass, representative, or private attorney general basis. You and AHM each further agree that no claims of other parties may be consolidated with your or AHM's claims in the arbitration without both your and AHM's consent. If for any reason a claim proceeds in court rather than through arbitration, you and AHM each waive any right to a jury trial.

If any part of this arbitration provision is later deemed invalid as a matter of law, then it shall be severed and the remaining portions of this provision shall remain in effect, with the exception that if a court or arbitrator determines in an action between you and AHM that the above class action waiver is unenforceable, then this arbitration provision will be void as to you.

#### **Governing Law: Jurisdiction\***

This Agreement and your participation in the Program are governed by the substantive laws of the State of California, U.S.A., without regard to its or any other jurisdiction's conflict of laws principles that would apply another law. If the arbitration provision is ever deemed unenforceable or void or not applicable to the specific claim, you irrevocably consent to the exclusive jurisdiction of the federal and state courts in Los Angeles County, California, U.S.A., for purposes of any legal action arising out of or related to this Agreement or your participation in the Program.

#### **Term And Termination\***

This Agreement becomes effective once signed by you and shall remain in effect (and if amended, as amended) until you withdraw from the Program or AHM terminates the Program, provided that the provisions of this Agreement for which the heading is marked with an asterisk (\*), any accrued obligations and remedies hereunder, and any other provisions that by their nature should reasonably survive, shall survive any termination of this Agreement. AHM reserves the right to terminate the Program at any time and for any purpose, or for no reason whatsoever, upon notice; except, if you breach this Agreement, your authorization to participate in the Program automatically terminates and no notice is required.

© 2020 American Honda Motor Co., Inc.