



**Appendix A – Demand Response Curtailment Service Provider Agreement**

**PON EM-015-2022**

## CURTAILMENT SERVICE PROVIDER AGREEMENT

The business entity identified on the signature page of this Curtailment Service Provider Agreement (the “Curtilment Service Provider” or “CSP”) has submitted an application in response to the Efficiency Maine Trust (the “Trust”) Demand Management Program – Demand Response Initiative Program Opportunity Notice (PON-EM-0152-022). As a condition of the PON-EM-015-2022 application process, the CSP has agreed to accept and comply with the terms and conditions of this Agreement if it is selected as one of the Trust’s approved Curtailment Service Providers under the Demand Management Program (the “Program”). This Agreement will become effective and binding on the CSP and the Trust if the Trust issues the CSP a written notice of incentive award under the Program.

In consideration of the approval of the CSP’s application for participation in the Program and the opportunity to receive incentive award payments from the Trust pursuant to the terms and conditions of PON-EM-015-2022 (which terms and conditions are incorporated in this Agreement), the CSP hereby agrees to the terms set forth in this Curtailment Service Provider Agreement (“Agreement”).

### INTRODUCTION

Certain Maine commercial and industrial rate payers are eligible to participate in the Trust’s Demand Response Initiative (“DRI”) by enrolling through an approved CSP (each, a “Customer” and collectively, the “Customers”). A Customer may select a curtailment service provider as such Customer’s CSP in which case such Customer and the CSP will enter sperate agreement under which the CSP will manage Customer’s participation in the Program (each, a “Customer Agreement”). A Customer that has engaged the CSP for such services is called a “Provider Customer”. A Provider Customer is a customer of the CSP only, and shall have no direct contract with the Trust.

The CSP represents and warrants to the Trust that, prior to the submission of an application for a demand response allocation under the Program, it shall have legally valid and binding Customer Agreements pursuant to which the CSP has agreed to provide the curtailment services and make demand response payments to the Provider Customer to the extent they are earned under the terms and conditions of the Program.

### PROVIDER PARTICIPATION TERMS AND CONDITIONS

The CSP agrees to and shall comply with the following terms and conditions (“Terms and Conditions”).

1. Provider represents and warrants that it will not seek any payments from the Trust until it has a legally-valid and executed Customer Agreement with the relevant Provider Customer. Such Customer Agreement will include terms and conditions under which the CSP agrees to provide the curtailment services and pursuant to which the Provider Customer is to be paid for participation in the Program from the CSP directly. Payments earned for Customer participation in the Program will be made to the CSP by the Trust and the CSP, in turn, agrees to make any payments due to the Provider Customer in accordance with its Customer Agreement. The payment amount will be determined by the Trust in accordance with the calculation methodology in the PON-EM-015-2022 Program Materials. Provider must comply with the Trust’s instructions in order to receive payment, including, without limitation, certain invoicing requirements.
2. For the avoidance of doubt, in no event shall the Trust be obligated to make any payments unless earned in accordance with the terms of the Program, and in no event shall the Trust be obligated to make any direct payments to a Provider Customer. Except as provided in this Agreement, the

Trust has no liability or obligations whatsoever in connection with the Program or any Customer Agreement. The Trust is a quasi-state agency and governmental entity and expressly reserves all limitations and immunities from liability as permitted under applicable law, including, without limitation, the Maine Tort Claims Act. In no event shall the Trust be liable or responsible for any indirect, incidental, consequential, or exemplary damages of any kind arising under or relating to this Agreement or the Program.

3. THE TRUST MAKES NO REPRESENTATION OR WARRANTY, AND ASSUMES NO LIABILITY WITH RESPECT TO QUALITY, SAFETY, PERFORMANCE, OPERATIONAL CAPABILITY, RELIABILITY OR ANY OTHER ASPECT OF ANY DESIGN, SYSTEM, OR EQUIPMENT INSTALLED IN CONNECTION WITH A THE TRUST DEMAND RESPONSE INITIATIVE, AND EXPRESSLY DISCLAIMS ANY SUCH REPRESENTATION, WARRANTY OR LIABILITY. THE TRUST IS IN NO WAY RESPONSIBLE FOR THE ECONOMIC, OPERATIONAL, TECHNICAL AND CAPACITY OF ANY CUSTOMER OR PROVIDER SYSTEM OR EQUIPMENT IN CONNECTION WITH A THE TRUST DEMAND RESPONSE INITIATIVE. THE TRUST DOES NOT MAKE ANY REPRESENTATIONS OF ANY KIND REGARDING THE BENEFITS OR ENERGY SAVINGS TO BE ACHIEVED BY CUSTOMER OR PROVIDER'S PARTICIPATION IN THE TRUST'S DEMAND RESPONSE INITIATIVE OR THE ADEQUACY OR SAFETY OF ANY EQUIPMENT OR MATERIALS INSTALLED OR PURCHASED IN CONNECTION WITH THE TRUST DEMAND RESPONSE INITIATIVE.
4. The CSP shall indemnify, defend, and hold harmless the Trust and its respective directors, officers, employees, and agents from and against (a) any and all expenses, costs, damages, claims, actions and suits (including reasonable attorney's fees and costs) arising out of or resulting from any negligent acts or omissions of the CSP or its employees or agents in connection with the Program, or (b) any third party claim, suit or action brought by a Provider Customer in connection with the Program except to the extent resulting from the Trust's failure to make payments owed to Provider under the Program. The CSP shall comply with all applicable laws, regulations and ordinances in the performance of this Agreement and each Customer Agreement. The CSP shall reimburse any amounts paid by the Trust that were procured in violation of the law or the terms and conditions of the Program.
5. The CSP agrees to comply with the applicable PON-EM-015-2022 Program Materials and terms. Except during any Commitment Period under the Program Materials, Provider understands that the Trust, in its sole discretion and without notice, may revise the Program Materials and terms and/or suspend or terminate the Program. Notwithstanding the foregoing, (a) the Trust may terminate or suspend the Program at any time to the extent the applicable regulatory entity terminates or suspends the Program, and (b) payments owed under this Agreement prior to the date of any such revision, suspension and/or termination will be honored pursuant to the Program Materials and terms in effect at the time such Customer Payments were earned. For purposes of this Agreement, "Commitment Period" means the time period during which the demand response events are called and as further described in the Program Materials. For electric demand response initiatives, this will be the from enrollment through September 30, 2022.
6. For each Customer Agreement executed after the Effective Date, the CSP agrees to include in such Customer Agreement references to the Trust's PON-EM-015-2022 Program Materials, the location of such Program Materials, and language notifying Customer that the Trust's terms and conditions for Customer's participation in the demand response initiative are included in the Program Materials.

7. The CSP is an independent contractor. No agency, partnership, joint venture, or other joint relationship is created by this Agreement.
8. The CSP shall not issue any press releases or make any other public announcements regarding the existence of this Agreement of the Program without the Trust's prior written consent.
9. The Trust grants the CSP a limited, no fee, revocable, non-sublicensable, non-transferable and non-exclusive license to use the Trust's Marks to promote the Program provided any use of the Trust's Marks by the CSP must (a) be reviewed and approved by the Trust prior to such use, and (b) strictly comply with the Trust's Mark usage guidelines and requirements provided to the CSP. The Trust retains all rights and title to the Trust's Marks. "The Trust's Marks" means Trust trademarks, service marks, trade dress, domain names, entity names, brand names, product names, proprietary logos, and symbols.
10. The initial term for this Agreement is one year and will renew annually in (1) year renewal terms unless the renewal is terminated by either Party within thirty (30) days prior written notification to the other party. This Agreement will terminate without notice requirement upon termination of the Program. The Trust will still provide to Provider all Customer Payments owed prior to the Agreement's date of termination or expiration that are to be sent to Provider in accordance with the terms of the Program.
11. It is expressly agreed and understood by the CSP that all energy usage profile information or other utility data of any identifiable public utility customer, including name, address, email address, and telephone number, is confidential and shall not be used or disclosed by the CSP, its personnel or subcontractors, except as authorized by the Trust and as strictly necessary for the performance of authorized services and Program participation, and for no other reason. The CSP shall take all necessary steps to protect confidential information, including the proper care, custody, use, and preservation of records, papers, files, communications, and any such items that may reveal confidential information about persons served by the Trust, or whose information is utilized in order to accomplish the purposes of this Agreement. The CSP acknowledges its obligation to observe and comply with the terms of the Efficiency Maine Confidential Information Management System Policy ("CIMS Policy") attached as Appendix B to the PON-EM-015-2022 Program Materials.
12. Provider may not assign this Agreement without the Trust's prior written consent, which shall not be unreasonably withheld. Waiver by either party of any breach does not waive any other breach. Failure of any party to insist on strict performance of any covenant or obligation in accordance with this Agreement will not be a waiver of such party's right to demand strict compliance in the future, nor will the same be construed as a novation of this Agreement. If any provision, or part thereof, under this Agreement is declared illegal or otherwise unenforceable, it shall be severed from this Agreement without affecting the legality or enforceability of the remaining provisions. This Agreement (including all exhibits, attachments, and referenced documents, including the PON-EM-015-2022 Program Materials and CIMS Policy) constitutes the entire agreement between the parties regarding the participation of the CSP as a curtailment service provider under the Program and supersedes all prior agreements, representations, warranties, promises and information, ether oral or written, express or implied, with respect to the subject matter hereof.

- 13. The CSP agrees that with the exception of Sections 7 and 9 of this Agreement, the terms of this Agreement shall apply retroactively to and after the date the CSP first entered into a Customer Agreement with a Customer. Sections 2, 3, 8, 9, 13 and 14 of this Agreement will survive termination and expiration of this Agreement. Section 4 of this Agreement will terminate six (6) years after the termination and expiration of this Agreement.
  
- 14. This Agreement shall be governed and construed in accordance with the laws of the State of Maine, without regard to its choice of law provisions. The CSP irrevocably submits to the jurisdiction of the state and federal courts located in the State of Maine

Intending to be bound, the Curtailment Service Provider identified below has executed this Agreement through its authorized representative.

CSP Entity Name	
Point of Contact Name	
Point of Contact Title	
Point of Contact Email	
Point of Contact Phone Number	
Date	
Address	
State of Incorporation/Organizaiton	