Enrollment No. XXXXXX Contract No. 20XXXXXX

EFFICIENCY MAINE TRUST

INCENTIVE AGREEMENT
Commercial & Industrial Custom Program
Energy Storage Systems

THIS AGREEMENT is made by and between Efficiency Maine Trust, an independent quasi-state agency of the State of Maine (“Trust”) and ____________________ [type of business entity, e.g. corporation, limited liability company, partnership] organized under the laws of the State of ___________, federal tax identification number ________________, with a place of business located at ______________________________ (“Recipient”). The Trust and the Recipient are each a “Party” and collectively, the “Parties.”

WHEREAS, the Trust administers certain funds under programs designed to promote and advance measures, investments, and arrangements in the State of Maine that enhance energy efficiency, reduce electricity consumption, reduce peak demands, and reduce greenhouse gas emissions from fossil fuel combustion;

WHEREAS, the Trust has issued a Program Opportunity Notice (“PON”) for funding of certain projects designed to meet specified program criteria (the “Program”);

WHEREAS, Recipient has submitted an application in response to a PON for funding of a certain project under the Program (the “Application”), which project is described in the Project Description in Rider A (the “Project”);

WHEREAS, the Trust, in reliance upon Recipient’s representations contained in the Application and Recipient’s covenants and commitments contained in this Agreement, has decided to make an award to Recipient under the Program for implementation of the Project (the “Incentive Award”).

NOW, THEREFORE, for valuable consideration, the Parties hereby agree as follows.

1. **INCENTIVE AWARD; PROJECT PERIOD; AND FUNDING DISBURSEMENTS**.

1.1 Relying upon Recipient’s representations in its Application and Recipient’s compliance with all terms and conditions of this Agreement, the Trust will provide Recipient an Incentive Award as set forth in Rider B hereof for validated reduction in grid-supplied energy resulting from dispatches from Recipient’s energy storage system during certain peak demand hours. Recipient acknowledges that payment of Incentive Award amounts is performance-based and that, based on Recipient’s performance, the total Incentive Award amount set forth in Rider B may or may not be paid out by the Trust. Incentive Award payments are subject to the terms and conditions of the Program and this Agreement.

1.2 This Agreement shall commence on ___________, 20__ and the Project shall be installed and placed into service by _____________, 20__ unless earlier terminated or extended in accordance with the provisions of this Agreement. Subject to the terms of this Agreement, Recipient’s Program participation will continue for five (5) June-September performance seasons from the date the Project is placed into service (the “Project Period”).

1.3 The Incentive Award shall be disbursed to Recipient by the Trust in accordance with the Performance Payment Schedule set forth in Rider B. The Trust’s obligation to make payments or disbursements to Recipient is conditioned on Recipient’s compliance with all material terms and conditions of this Agreement and the Program, provision of required information, interval data, and reports in accordance with Program requirements set forth in Rider B. Incentive Award amounts will be disbursed for dispatches from Recipient’s energy storage system only to the extent supported by interval data.

1.4 Recipient acknowledges that payment of the Incentive Award is conditioned on Recipient’s assignment to the Trust of capacity resource credits and forward capacity market revenues resulting from the Project.

1.5 By submitting or transmitting any data, documents, or information, Recipient is representing that such data, documents, and information are accurate. By paying all or a portion of any Incentive Award, the Trust does not waive its right recover any payment later determined to be improper or not allowable under this Agreement.

2. **STANDARDS OF PERFORMANCE**.

2.1 Recipient shall, and shall cause its contractors to, perform all work and services in connection with the Project in a timely, professional, and workmanlike manner. Recipient shall perform, or cause to be performed, all work and services in accordance with the Program and Project Description.

2.2 Recipient shall be responsible to furnish or arrange for all qualified personnel, facilities, equipment, materials and services as necessary for the installation and performance of the energy storage system and shall provide and maintain competent and adequate supervision of the Project to ensure that all work and services conform to the Project Description.

2.3 Recipient shall, and shall ensure that its contractors, abide by and conform to applicable state, federal, and local laws, ordinances, rules, regulations, and standards in the performance of this Agreement and execution of the Project.

2.4 Recipient shall keep the Trust apprised of all material developments in connection with the Project and shall consult and coordinate with the Trust, through its Agreement Administrator, as necessary in the performance of the Project. The Trust reserves the right to monitor Recipient's performance of this Agreement, including the performance of any contractor, in order to verify compliance.

2.5 The Trust does not make any representations of any kind regarding the results to be achieved by the Project or the adequacy or safety of such measures. The Trust does not endorse, guarantee, or warrant any particular vendor, contractor, manufacturer or product, and it provides no warranties, express or implied, for any product or services. Neither the Trust nor its consultants are responsible for assuring that the design, engineering, or construction of the Project or installation of the energy efficiency and conservation measures is proper or complies with any particular laws, codes, or industry standards. Recipient is solely responsible for the design and implementation of the Project.

3. **RECIPIENT REPRESENTATIONS AND RESPONSIBILITIES**.

3.1 Recipient acknowledges that funding of the Incentive Award is provided for specified energy usage reductions according to the Program requirements and all applicable regulations. Recipient shall abide by the terms of this Agreement, including the terms and conditions contained in any Riders appended hereto.

3.2 All requirements, restrictions and obligations regarding the receipt and use of Program Incentive Awards are deemed incorporated in this Agreement and Recipient agrees to comply with all such requirements, restrictions and obligations.

3.3 Recipient represents that it is authorized to conduct business in the State of Maine and that it shall maintain its good standing throughout the term of this Agreement. Recipient represents that it has all requisite power and authority to execute this Agreement and perform the Project and that the execution and delivery of this Agreement and the performance of the Project have been duly authorized by all necessary action of its shareholders, directors, trustees, partners, members, or managers as appropriate.

3.4 Recipient represents that it is eligible to receive the Incentive Award and that it is not suspended, debarred or disqualified from receiving state contracts, grants, awards or other appropriations.

3.5 Recipient represents that it has filed all federal and state tax returns and reports as required by law and has paid all taxes, assessments and governmental charges due, except those contested in good faith in a proceeding with the assessing authority.

3.6 Recipient has disclosed any relationship, direct or indirect, between Recipient, its officers, directors, trustees, partners, members, managers, or employees, and the Trust or State that could reasonably give rise to a conflict of interest.

3.7 There has been no material adverse change in the business, operations, or financial condition of Recipient, or in the matters described in the Application pertaining to the Project, since the submission of the Application. Recipient represents that neither the Application, nor any document, report, or certification given by Recipient in connection with this Agreement or the Project contains any untrue statement of material fact or any knowing omission of material fact.

3.8 Recipient shall notify the Trust of any material change in Recipient's legal status, financial status, corporate status, or compliance status with applicable laws, or any other change in status of the Project that could have a material adverse effect on Recipient's ability to complete and implement the Project as described in Recipient's Application and this Agreement.

3.9 Recipient shall provide such documents and information and execute any additional documents, disclosures, certifications and statements of compliance as may be required under state or federal law or regulation, or as may be reasonably requested by the Trust in order to ensure compliance with applicable law or full performance of this Agreement.

3.10 Recipient acknowledges that a breach of any representation contained herein or the provision of any false or misleading information or knowing omission of material information in connection with the Project, whether by Recipient or its agents, may result in termination and revocation of the Incentive Award, require the immediate reimbursement of any Incentive Award amounts previously disbursed, and may result in Recipient's suspension or debarment from participation in Trust programs.

3.11 Recipient's representations constitute continuing representations.

4. **SUSPENSION OF INCENTIVE AWARD**.

4.1 The Trust may suspend Incentive Award disbursements and payments to Recipient for any of the following reasons:

(i) Recipient's failure to comply with the terms and conditions of this Agreement, including any representation or covenant contained herein;
(ii) Recipient's failure to execute the Project with due diligence, or to achieve an agreed Project milestone; or
(iii) A material adverse change in Recipient's legal, business, or financial status.

4.2 The Trust shall provide Recipient with written notice of its decision to suspend Incentive Award disbursements and payments under this provision and shall provide Recipient with an explanation of the reasons therefor. The Trust shall specify the remedial actions that the Recipient must complete to successfully secure reinstatement of the Incentive Award.

5. **TERMINATION OF AGREEMENT**.

5.1 The Trust may declare Recipient to be in default of this Agreement upon the occurrence of any of the following events or circumstances ("Events of Default"):

(i) Recipient's material breach of any representation, covenant, condition, or obligation under this Agreement;
(ii) Recipient's violation of law;
(iii) Recipient's failure to make regular and substantial progress toward the performance and completion of the Project;
(iv) Recipient's failure to provide any periodic or final reporting or accounting as required under this Agreement or applicable law;
(vi) Recipient's insolvency, receivership, assignment for the benefit of creditors, foreclosure, or voluntary or involuntary bankruptcy; or
(vii) Any event of default identified elsewhere in this Agreement.

5.2 Without prejudice to any other rights or remedies, the Trust may terminate this Agreement upon any Event of Default by providing Recipient with thirty (30) days written notice of the Trust's intent to terminate, and the grounds therefor. Termination shall occur if any Event of Default remains fully or partially uncured thirty (30) days after the Trust has provided Recipient with the written notice of intent to terminate. The Trust shall have no further obligation to Recipient after termination.

5.3 Notwithstanding anything to the contrary in this Agreement, the Trust may terminate this Agreement, in whole or in part, in its discretion and without penalty, in the event that funds are de-appropriated, re-allocated, or restricted, the

Trust's authorization to operate or administer the Agreement or the relevant program or project is withdrawn or curtailed, there is a material change in project or program conditions, or there is a material change in legislation affecting the Trust's authority or operations.

5.4 The Trust reserves all rights and remedies available at law or in equity in the event of a breach of this Agreement by Recipient including, without limitation, the right to demand reimbursement of all Incentive Award funds disbursed under this Agreement and, upon such demand, Recipient shall immediately so reimburse the Trust. Without limiting the foregoing, in the event of Recipient's breach or default, Recipient shall pay on demand all of the Trust's costs, fees (including attorney and paralegal fees and disbursements, including such fees or disbursements arising in any bankruptcy case or proceeding), expenses, and damages of any kind incurred by or imposed on the Trust in connection with or as a consequence of Recipient's breach of this Agreement. The various rights, remedies, options and elections of the Trust in this Agreement are cumulative and not exclusive of any other right, remedy, or power allowed or available at law or in equity.

6. **MISCELLANEOUS PROVISIONS**.

6.1 This Agreement shall be governed in all respects by the laws, statutes, and regulations of the State of Maine. Any legal proceeding instituted by the Trust or Recipient regarding this Agreement shall be brought in State of Maine administrative or judicial forums.

6.2 All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the other terms of this Agreement to the extent possible. The invalidity or unenforceability of any particular provision or part thereof of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

6.3 This Agreement, along with the Riders and other provisions expressly incorporated herein, contains the entire Agreement of the Parties, and neither party shall be bound by any statement or representation not contained herein or in a written amendment or change order signed by the Trust. This Agreement, and the rights and obligations hereunder, shall inure to the benefit of the Parties and their permitted assigns. No waiver shall be deemed to have been made by any of the Parties unless expressed in writing and signed by the waiving party. The Parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the Parties which is not expressed in writing. The failure of any Party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any Party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.

6.4 The following Riders are attached to and made part of this Agreement:

Rider A – Project Description and Project Development Milestones
Rider B – Performance Payments
Rider C – General Terms and Conditions

6.5 All progress reports, correspondence and related submissions from the Recipient shall be submitted to:

Name:	Jesse Remillard
Title:	Senior Program Manager
	Efficiency Maine Trust
Address:	151 Capitol Street, Suite 4
	Augusta, Maine 04330-6856
Telephone:	(207) 368-2558
E-mail:	jesse.remillard@efficiencymaine.com

This individual is designated as the Agreement Administrator on behalf of the Trust for this Agreement, except where specified otherwise in this Agreement or as replaced by the Executive Director of the Trust. The Agreement Administrator shall be the Trust's representative during the Project Period. He/she has authority to curtail services if necessary to ensure proper execution and compliance. He/she shall certify to the Trust when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Recipient, subject to the approval of the Executive Director of the Trust.

6.6. All notices under the Agreement shall be deemed to have been duly given and delivered: (i) upon delivery, if delivered by hand, (ii) three (3) business days following posting, if sent by registered or certified mail, return receipt requested, or (iii) one (1) business day after dispatch if sent overnight or next day delivery by national courier service, such as FedEx or UPS, with tracking receipt.

IN WITNESS WHEREOF, the Trust and Recipient have executed this Agreement through their authorized representatives.

Efficiency Maine Trust

By: ____

Michael Stoddard, Executive Director

Date: ______________________

[RECIPIENT COMPANY NAME]

By: ____

Name and Title, Recipient Representative

Date: ______________________

RIDER A

PROJECT DESCRIPTION AND PROJECT DEVELOPMENT MILESTONES

Recipient shall implement and perform the Project in accordance with the requirements of PON-EM-003-2027 V1.

The Recipient will install a battery energy storage system (BESS) to reduce facility demand during summer peak demand periods. The BESS will be a non-export system installed at ______ and serving electric loads for the _____.

Recipient will install the Project specified in its Program application as approved by the Trust, subject to any modifications as may be approved by the Trust (such approval not to be unreasonably withheld). At a minimum the Project must satisfy the following base criteria:

- The Project must be interconnected behind-the-meter;
- The Recipient's facility served by the BESS must be located in Maine and have an account with a Maine electric utility;
- The BESS capacity must be at least 20 kW;
- The Recipient's facility must have a peak electric demand greater than the total demand reduction anticipated from the BESS, unless otherwise approved by the Trust;
- The BESS must be able to collect and transmit 15-minute interval data;
- The system must be designed to maintain a minimum 80% battery round-trip efficiency;
- The BESS must carry at least a 10-year manufacturer's warranty;
- The BESS must be UL-listed or certified by another nationally recognized testing lab and be recognized as meeting all safety requirements; and,
- The BESS and its components must comply with all manufacturer installation requirements, applicable laws, regulations, codes, licensing, and permit requirements.

RESERVATION OF FUNDS; PROJECT DEVELOPMENT MILESTONES. The Trust agrees to reserve funds for a period of two (2) years from the date of final execution of this Agreement by the Parties, unless extended, for anticipated payment of Incentive Awards to Recipient under this Agreement. Reservation of incentive funds is dependent on Recipient providing quarterly (calendar) progress updates and meeting certain specified progress milestones as set forth below unless the reason for delay is promptly communicated to and approved by the Trust. For the avoidance of doubt, the Trust has no obligation to continue to reserve Incentive Award funds, and may release reserved funds, if Recipient fails to satisfy the prescribed milestones within the prescribed periods.

Project Development Milestone 1:
Within 60 days of Project approval, the following must be submitted to the Trust:
1. Copy of utility interconnection application and confirmation of receipt from the utility;
2. Letter of intent detailing Recipient's financing plan for the system; and,
3. Copy of preliminary system design.

Project Development Milestone 2:
Within 180-365 days of Project approval, the following must be submitted to the Trust:
1. Proof of equipment purchase orders;
2. A completed building permit and electrical permit application;
3. A completed fire permit application (if applicable); and,
4. Proof of payment of the cost of interconnection upgrade costs (if applicable).

Project Development Milestone 3:
Within 365 to 730 days of Project approval, the following must be submitted to the Trust:
1. Local building department approval and electrical permit approval;
2. Fire department approval (if applicable);
3. Utility interconnect permission to operate letter;
4. Submission of the final as-built electrical drawing stamped by a Maine Professional Engineer (PE) and electrical inspection certificate;
5. The total installed project cost;
6. The decommissioning plan;

7. Evidence of applicable UL certifications for system equipment
8. All required safety certifications; and,
9. A commissioning report documenting the results of commissioning in accordance with manufacturer specifications.

Project Development Milestone 4:
The Recipient is responsible for purchasing and installing revenue grade metering capable of collecting 15-minue interval data. The metering location should be at the inverter unless the Trust agrees in writing to locating the point of metering elsewhere. Metered data points should include at a minimum:

- Average real power or kWh
- Voltage
- Current
- Power factor

Following commissioning, the Trust will require a minimum of fifteen (15) three (3)-hour BESS dispatches per summer season when electricity demand on the ISO-NE grid is at peak demand conditions. Timing of the BESS dispatch events are the sole responsibility of the Recipient and will not be dictated by the Trust. The goal of the Program is to reduce Recipient's facility electric load during the ISO-NE peak system hour or the installed capacity (ICAP) hour.

RIDER B

PERFORMANCE PAYMENTS

Incentive Award: up to $_____ at $200 per kW for 5 years of verified BESS dispatch during ISO-NE peak load summer periods in accordance with the Program terms (Based on an enrolled capacity of ___ kW and subject to adjustment as provided in the Agreement)

The Trust will provide an incentive award equal to $200 per kW of validated reduction in grid-supplied energy if the BESS was dispatched during summer hours targeting the ISO NE ICAP hour. The system must be deployed at least 15 times per summer season (June, July, August, and September). To qualify for the performance payment, a dispatch must be at least three (3) hours long and cover at least one hour during which ISO-NE hourly load is within 15% of the peak summer hourly load.

PERFORMANCE PAYMENTS. The Trust will disburse any earned Incentive Award to the Recipient each year in the fourth quarter for up to 5 annual payments after review of each annual performance period from June through September. Each annual payment will be $200 per kW of validated average demand reduction over 15 qualifying 3-hour deployments up to $___. Recipient performance will be measured by interval data collected at the BESS inverter or through the BESS management system utilizing the revenue grade metering installed by Recipient.

AVERAGE DEMAND REDUCTIONS. Validated average demand reductions will be based on 15-minute interval data. Recipient must provide this data for each June-September performance period during the Project Period in order to qualify for each annual payment. Validation of the average demand reductions will consist of determining the 15 qualifying deployments with the highest average kilowatt impact over a 3-hour period.

QUALIFYING DEPLOYMENTS. Qualifying deployments will be determined as those that occur when ISO-NE hourly load is within 15% of the highest hourly load over the summer performance period. Each dispatch must be at least three (3) hours. Qualifying deployments must also achieve at least 50% of the enrolled kW capacity over an hour that ISO-NE load is found to be within 15% of the peak summer hourly load.

Recipient is responsible to provide the Trust with reasonably complete and accurate 15-minute interval data for both the BESS and the Recipient facility load for the performance period (June 1 to September 30) at the conclusion of each performance period during the Project Period, and no later than October 15. For the avoidance of doubt, Incentive Award amounts shall be disbursed only for reductions in grid-supplied energy resulting from dispatches from Recipient's energy storage system during certain peak demand hours that are supported by interval data. Claimed BESS dispatches unsupported by corresponding interval data will not be compensated.

Following an evaluation of the interval data submitted by Recipient each year, the Trust will verify performance and calculate incentives that may have been earned during the subject performance period. The Trust will calculate incentives by taking the average performance of the dispatched energy storage capacity across all fifteen (15) dispatch events using 15-minute interval data. Only qualifying deployments, as described above, will be eligible. The Trust will discard dispatch events from the incentive calculation where those events occur when ISO-NE load is not within 15% of the peak monthly load. For example, if the BESS dispatched 6 times in June, and 2 events occurred when ISO-NE was *not* within 15% of the summer peak load, there would be only 4 qualifying dispatch events for the month. Once performance has been verified and incentives calculated for the subject performance period, the Trust will make payment of the earned Incentive Award for the performance period during the fourth quarter of the same year as the measured performance period. Late or incomplete data submission by Recipient will result in a delay in payment of any earned Incentive Award.

Timestamped BESS interval data must be submitted by Excel spreadsheet to the Trust's contact listed in the Agreement for the purpose of the performance evaluation. At a minimum, the datapoints shown under Milestone 4 in Rider A must be included.

Payments are subject to the Recipient's compliance with all terms set forth in this Agreement and subject to the availability of funds. All payments are subject to reimbursement by Recipient in the event of a breach of the Agreement.

RIDER C

GENERAL TERMS AND CONDITIONS

1. INDEPENDENT CAPACITY. Recipient is an independent party and is not an agent or representative of the Trust. Recipient has no authority to represent or bind the Trust in any manner. Recipient shall be solely responsible for the performance of the Project and the conduct of its employees, agents, and contractors. Recipient shall be solely responsible for the payment of wages and benefits to its employees and the payment of contract and service fees to its contractors and vendors and for all associated tax withholding and reporting obligations.

2. ASSIGNMENT. Recipient shall not assign or otherwise transfer or dispose of its rights, interest, duties or obligations under this Agreement, including any right or interest in the efficiency measures or Equipment funded with the Incentive Award, without the prior express written consent of the Trust, which consent may be granted, denied, or conditioned in the Trust's reasonable discretion. Any purported transfer or assignment without prior written consent of the Trust shall be null and void.

3. EQUAL EMPLOYMENT OPPORTUNITY; NON-DISCRIMINATION. During the performance of this Agreement, Recipient shall abide by all applicable equal employment opportunity and nondiscrimination statutes, regulations, and orders including, without limitation, the Maine Human Rights Act. To the extent applicable, the provisions of 5 MRSA §784 are incorporated herein by reference and Recipient shall cause the such provisions to be inserted in any contract or subcontract for any work covered by this Agreement so that such provisions shall be binding upon each contractor or subcontractor.

4. EMPLOYMENT AND PERSONNEL; STATE EMPLOYEES NOT TO BENEFIT. Recipient shall not engage any person in the employ of the Trust or any State department or agency in a position that would constitute a violation of 5 MRSA § 18-A (Conflicts of Interest in Contracts with State) or 17 MRSA § 3104 (Conflicts of Interest in State Purchases). No individual employed by the Trust or the State at the time this Agreement is executed or any time thereafter during the Project Period shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom that would constitute a violation of 5 MRSA § 18-A or 17 MRSA § 3104. Recipient shall not engage on a full-time, part-time or other basis during the Project Period any other personnel who are or have been at any time during the Project Period in the employ of the Trust or any State department or agency, except regularly retired employees, without the written consent of the Executive Director of the Trust. Recipient shall not engage on this Project on a full-time, part-time or other basis during the Project Period any retired employee of the Trust who has not been retired for at least one year, without the written consent of the Executive Director of the Trust.

5. NO SOLICITATION WARRANTY. Recipient warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for Recipient, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the Incentive Award or this Agreement.

6. LOBBYING. No State-appropriated funds shall be expended by the Recipient for influencing, or attempting to influence, an officer or employee of any agency, a member of the State Legislature, an officer or employee of the State Legislature, or an employee of a member of the State Legislature, in connection with the awarding of any agreement, the making of any grant or award, the entering into any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any agreement, grant, award, or cooperative agreement.

7. RECORD RETENTION AND INSPECTION. Recipient shall make and retain all such documents and records necessary to establish proper performance of the Project and to support all invoices and requests for payment under this Agreement. Recipient shall retain all project records (including financial records, progress reports, service, equipment, and material orders, invoices, evidence of payment, and payment and reimbursement requests) for a minimum of three (3) years following the expiration or termination of this Agreement. Recipient shall permit the Trust or its authorized representatives to examine such records and to interview any officer or employee of Recipient or any of its contractors regarding the work performed under this Agreement. Recipient shall furnish copies of all such records upon request.

8. ACCESS TO PUBLIC RECORDS. As a condition of accepting any public funds under this Agreement, Recipient hereby acknowledges and agrees that documents and information relating to Recipient's project, the Incentive Award and this Agreement, other than information designated confidential by statute, may be treated as public records under the freedom of access laws. The Trust requires transparency on how funds are managed, awarded, and spent. Accordingly, subject to the foregoing limitation on designated confidential information, Recipient hereby agrees to permit disclosure of information about Recipient's project and how Incentive Awards and Program funds were awarded and spent.

9. COMPLIANCE WITH LAW. Recipient shall comply with all applicable laws, rules, regulations and ordinances in the performance of this Agreement. Recipient is responsible to obtain and maintain all permits, licenses, and other approvals as may be required under applicable laws for implementation of Recipient's project and the performance of any work or services under this Agreement.

10. INDEMNIFICATION. Recipient agrees to indemnify, defend and save harmless the Trust and its officers, directors, trustees, agents and employees from and against any and all demands, suits, actions, claims, injuries, liabilities, losses, damages, costs, fees, and expenses (including attorney fees and legal expenses and the costs of enforcing any right to indemnification under this Agreement) made against or suffered or incurred by the Trust resulting from or arising out of Recipient's performance of this Agreement, the Project, or the installation or operation of the equipment or efficiency measures for which an incentive or award is provided by the Trust. Claims to which this indemnification applies include, without limitation: (i) claims of any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other entity providing work, services, materials, equipment or supplies in connection with the performance of this Agreement or the Project; (ii) personal injury, death, or property damage suffered or incurred by any person or entity arising from the Recipient's performance of this Agreement or the installation or operation of the Project, including claims of Recipient's employees, agents, or contractors and subcontractors; and (iii) claims arising or resulting from Recipient's breach of this Agreement or violation of law. Recipient's indemnity obligations apply without regard to any alleged negligence of the Trust and without regard to any immunity that might otherwise be accorded under the workers' compensation laws. This indemnification is intended to be as broad as the law allows.

11. NOTICE OF CLAIMS. Recipient shall give the Agreement Administrator immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of the Agreement or the Project, and prompt notice of any claim made against the Recipient by any contractor or vendor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement.

12. APPROVAL. This Agreement must have the written approval of the Executive Director of the Trust before it can be considered an enforceable contract binding on the Trust.

13. TAXES. Recipient shall be solely responsible for the determination and payment when due of all taxes that may be due in connection with the Incentive Award and the Project.

14. INSURANCE. Recipient shall procure and maintain commercial general liability insurance with coverage for the activities and risks associated with the Project and with coverage limits sufficient to protect itself and the Trust, as additional insured, from claims arising from the Project, including any contractual liability of Recipient under this Agreement. Recipient shall procure and maintain workers' compensation insurance coverage as required under Maine law. Recipient shall procure and maintain replacement value "all risk" property and casualty insurance covering the Equipment funded with the incentive or grant provided by the Trust. Prior to disbursement of any Incentive Award amount, Recipient shall furnish the Trust with a certificate of insurance or other written verification of the existence of all such insurance coverages required under this Agreement.

15. NON-APPROPRIATION. Notwithstanding any other provision of this Agreement, if the Trust does not receive sufficient appropriations to fund this Agreement, if funds are de-appropriated or re-allocated, or if the Maine State Legislature, the Maine Public Utilities Commission, or a state or federal court restricts or divests the Trust of its authority to expend funds, then the Trust will be relieved of any obligation to make further payments under this Agreement.

16. FORCE MAJEURE. The obligations of each party under this Agreement shall be excused for the duration of any Force Majeure Event that prevents a Party's ability to perform such obligations. A "Force Majeure Event" shall mean an act of God, act of war, riot, fire, explosion, flood or other catastrophe, or other condition or circumstance beyond the reasonable control of a Party and which could not reasonably be avoided by the Party claiming Force Majeure. The Party claiming Force Majeure shall notify the other Party upon the occurrence of a Force Majeure Event that will or is expected to prevent performance under this Agreement. The Trust may terminate this Agreement if a Force Majeure Event lasts more than 90 days.

17. SET-OFF RIGHTS. Without limiting any other right or remedy, the Trust shall have all common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the Trust's option to withhold for the purposes of set-off any monies due to Recipient under this Agreement up to any amounts due and owing to the Trust with regard to this Agreement or any other agreement between Recipient and the Trust, including any agreement for a term commencing prior to the term of this Agreement.

18. RESERVATION OF IMMUNITIES; DAMAGE LIMITATION; The Trust is a quasi-state agency and governmental entity and expressly retains all defenses to, immunities from, and limitations of liability. Nothing in this Agreement is intended, nor shall be construed, to constitute a waiver of any defense, immunity, or limitation of liability that may be available to the Trust, or to any of its officers, agents or employees, pursuant to the Eleventh Amendment to the Constitution of the United States of America, the Maine Constitution, the Maine Tort Claims Act (14 M.R.S.A. § 8101 et seq.), or any other state or federal statute or the common law. In no event shall the Trust be liable to Recipient or any person or entity claiming through Recipient for indirect, incidental, special, or consequential damages of any kind, all of which are expressly waived by Recipient.

19. NO THIRD-PARTY RIGHTS. No person or entity that is not a party to this Agreement may assert any right or make any claim under this Agreement.

20. EFFICIENCY MAINE LOGO; PUBLIC DISCLOSURE. The "Efficiency Maine" name and logo are registered trademarks of the Trust. The Trust grants Recipient a limited, revocable, non-exclusive license to use the Efficiency Maine logo in connection with the Project to publicly acknowledge the Trust's funding and participation in the Project. Any such use must be in strict accordance with the Trust's design, image, and placement standards. The license to use the "Efficiency Maine" marks is revocable by the Trust at any time.

21. ENERGY DATA. Recipient grants the Trust and its agents access to its utility data and energy usage information as reasonably necessary in connection with the Project and the Program. Recipient authorizes the Trust and its agents to access facilities and records to collect, copy, and review data needed to measure and verify energy usage, electricity savings, fuel reductions, and Equipment performance (this may include but is not limited to utility bills, metering data, facility equipment surveys, information on operational practices, and site occupancy levels). Recipient agrees to provide the Trust or its agents associated data from a period prior to the start of the Project as necessary to establish baseline energy and/or fuel use and costs.

22. INFORMATION IN SUPPORT OF THE PROGRAM. The Trust is required to report on use of and the performance of energy efficiency and conservation programs and projects. Information from these reports may be made available to the public. Recipient agrees to cooperate with the Trust on such reporting and shall provide information related to the award, this Agreement, the Project, and any related agreement as requested or required by the Trust to meet its obligation to provide accurate, complete, and timely information to the public, to meet the Program reporting requirements, and/or to comply with state or federal law or regulation.

23. SITE VISITS. The Trust has the right to make site visits at reasonable times to review Project progress, performance, and operation. Recipient shall provide reasonable access to facilities, resources, and assistance for the safety and convenience of the Trust and its representatives to perform their duties. All site visits will be performed in a manner that does not unduly interfere with or delay the work or operations of Recipient or its contractors. Site visits shall be subject to Recipient's reasonable facility access, safety, security, and confidentiality policies.

24. MEASUREMENT AND VERIFICATION. Recipient shall allow independent third-party verification of Project installation and performance under terms as may be established by the Trust. Recipient shall work in good faith with the Trust to develop a measurement and verification plan designed to assess the performance of the

Equipment and achievement of Project and Program goals. Recipient shall conduct and cooperate in such auditing and reporting as may be necessary to assess performance of the Project and shall provide information as may be necessary or useful for such purposes.

25. CAPACITY RESOURCES; CREDITS; FORWARD CAPACITY REVENUE. It is understood that the Project is intended to achieve certain energy efficiencies, reductions in fuel usage, and reductions in electricity consumption and that the Project may produce or result in certain marketable or tradable credits, benefits, and proceeds, including energy efficiency capacity resources, capacity savings, avoided energy, renewable energy credits, and forward capacity market credits, payments, or revenues (collectively, the "Capacity Resources, Credits and Revenues"). In consideration of the Incentive Award, and unless otherwise expressly agreed in writing by the Trust, the value of all such Capacity Resources, Credits and Revenues produced or resulting from the Project for the expected lifetime of the equipment and measures installed or implemented under this Agreement shall be deemed owned by the Trust and the Trust shall have the sole right to bid, trade, transfer, sell, assign, use, and apply all such Capacity Resources, Credits and Revenues for the benefit of the Trust and the programs administered by the Trust under the Efficiency Maine Trust Act. Recipient hereby transfers and assigns to the Trust all of Recipient's right, title, and interest in such Capacity Resources, Credits and Revenues.

26. VENDOR OR CONTRACTOR SELECTION. Recipient may select any vendor or contractor to provide the equipment and perform the work for the Project. Recipient is solely responsible for management of its Project vendors and contractors.

27. ADDITIONAL CONTRACTING REQUIREMENTS. All requirements, restrictions and obligations regarding the use of State or Trust funds and Incentive Awards are deemed incorporated in this Agreement to the extent necessary to ensure compliance with applicable law. Any alterations, additions, or deletions to the terms of the Agreement that are required by changes in law or regulation governing the use of State or Trust funds or Incentive Awards are automatically incorporated in the Agreement without the necessity of a formal written amendment. Recipient agrees to comply with all such requirements, restrictions and obligations and shall cause its contractors to comply with all such requirements, restrictions and obligations.

28. SURVIVAL. The terms, conditions and obligations in this Agreement which by their nature or intent continue beyond termination or expiration of this Agreement, including, without limitation, provisions regarding document retention, audit, site visits, reporting, use and performance of the funded equipment and measures, indemnity and remedies, shall survive the termination or expiration of this Agreement.