

## EFFICIENCY MAINE TRUST

### TERMS AND CONDITIONS Commercial & Industrial Custom Program

These Terms and Conditions are incorporated into the Project Award Notification Letter and, together with such Letter, constitute the agreement ("Agreement") between Efficiency Maine Trust ("Trust") and the project incentive award recipient named in the Project Award Notification Letter ("Recipient").

The Trust has issued a Program Opportunity Notice ("PON") for funding of certain projects designed to meet specified program criteria (the "Program") and the Recipient has submitted an application (the "Application") in response to the PON for funding of a certain project under the Program (the "Project"). The Trust has determined that the Recipient's Application satisfies the Program criteria and, in reliance upon Recipient's representations contained in the Application and Recipient's covenants and commitments contained in this Agreement, has made an award to Recipient for implementation of the Project as contained in the Project Award Notification Letter (the "Incentive Award").

The Trust may assign multiple enrollment numbers to the same approved Project based on the type of fuel savings associated with the Project (e.g., electric, natural gas, and/or other energy sources). These Terms and Conditions apply to all enrollments related to the approved Project.

#### **1. INCENTIVE AWARD; DISBURSEMENTS.**

- 1.1 The Trust will provide Recipient an Incentive Award as set forth in the Project Award Notification Letter. The Trust reserves the right to adjust the Incentive Award as necessary to maintain compliance with the Trust's established Program funding criteria and any limitations as set forth in the PON. The Trust will pay no more than the approved fraction of the incremental cost to the Recipient of purchasing the energy efficiency measure, or the pre-approved incentive amount, whichever is less. The Trust may, in its discretion, recognize incremental installation labor costs that are unique to the proposed energy efficiency measure to the extent that they are reasonable, verifiable, and actually incurred by the Recipient. The Trust reserves the right to lower the Incentive Award if the quantity and/or cost of energy efficiency measures actually installed differs from the pre-approved amounts.
- 1.2 The Trust expects to disburse Incentive Reward amounts within thirty (30) days of Project completion. The Trust will not pay any Incentive Award amounts until it has performed a satisfactory post-installation verification or it has expressly waived this requirement for Recipient in writing. If the Trust determines that the approved energy efficiency measures were not installed in a manner consistent with the Application or Program, if unapproved measures were installed, or if the installation is not consistent with generally accepted engineering practices, the Trust may require changes before making payment. The Trust will not make payment until it verifies that Recipient has received, as appropriate, final drawings, operation and maintenance manuals, and operator training. The Trust reserves the right to seek a complete refund, and Recipient shall be obligated to provide complete reimbursement to the Trust, for all Incentive Award amounts paid if, at any time, the Trust learns that the approved measures were not installed, were disconnected, or were installed at a location that was not pre-approved.
- 1.3 Recipient must provide copies of all invoices and other documentation that verify the costs of purchasing and installing the approved energy efficiency measures, including all materials, labor, and equipment discounts. Invoices must indicate a verifiable breakout of all equipment purchased for installation under this Agreement. The Trust has the right at any time to require invoices from the contractor to determine the price paid by the contractor to its supplier (including any discounts or incentives) for the equipment.
- 1.4 The Trust reserves the right to deny incentives for any equipment or measures that have not been favorably assessed or approved by recognized, independent public authorities, such as the Underwriter's Laboratory (UL). The Trust may, at its discretion, require that Recipient undertake, at its own expense, testing of proposed equipment that does not carry the Listed Mark by UL, or an equivalent independent testing facility approved in advance by the Trust.
- 1.5 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.
- 1.6 Recipient shall expend Incentive Award funds only for approved Project purposes and only in accordance with the terms and conditions of the Program and this Agreement.
- 1.7 The Trust will not reimburse Recipient for any cost or expense that is contrary to this Agreement or applicable law. Any expenditure by Recipient or commitment by Recipient to expend funds for the Project prior to the effectiveness of this Agreement is at Recipient's risk. Reimbursement of Project funds expended or committed by Recipient prior to the effectiveness of this Agreement is at the Trust's sole discretion.

- 1.8 By submitting any invoice or request for reimbursement, Recipient is representing that the services or costs identified in the invoice or request for reimbursement have been provided or incurred, are within the approved Project scope, and that such costs and expenses are proper and allowable under this Agreement. By paying all or a portion of any invoice or request for reimbursement, the Trust does not waive its right to recover any payment or reimbursement later determined to be improper or not allowable under this Agreement.
- 1.9 If Recipient has (a) not completed installation of the approved Project, and has (b) not applied to the Trust for an extension within one year from the date of the Project Award Notification Letter, the Trust may cancel this Agreement without liability and without any further obligation to Recipient. If Recipient fails to advise the Trust that the Project is complete or fails to provide required post-installation documentation within 60 days of project installation may be denied payment of the Incentive Award.
- 1.10 The Trust reserves the right to make follow-up visits to Recipient's facility during the 24 months following the actual completion date at a time convenient to the Customer, and with at least one week advance notice. The purpose of the visit(s) is to review the operation of the EEMs for program evaluation purposes, including monitoring their energy performance. The scope of review is limited to determining whether program conditions have been met.

## **2. STANDARDS OF PERFORMANCE.**

- 2.1 Recipient shall be responsible to furnish or arrange for all qualified personnel, facilities, equipment, materials and services as necessary for the performance of the Project. 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.
- 2.2 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 the Project.
- 2.3 Recipient shall keep the Trust apprised of all material developments in connection with the Project. The Trust reserves the right to monitor Recipient's performance of this Agreement in order to verify compliance.
- 2.4 Recipient shall operate and use the equipment and efficiency measures funded in whole or in part with the Incentive Award for the purposes intended by the Program and this Agreement, and in accordance with the terms of this Agreement.
- 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 efficiency improvements and conservation measures. Incentive Award funds must be used in compliance with Program requirements and all applicable regulations.
- 3.2 All requirements, restrictions and obligations regarding the use of Program Incentive Awards are deemed incorporated in this Agreement and Recipient agrees to comply with all such requirements, restrictions and obligations. Recipient represents and warrants that no portion of the Program Incentive Award will be used in connection with any ineligible project under the PON.
- 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.
- 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 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.
- 3.6 Recipient represents that 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. Recipient shall notify the Trust of any material change in Recipient's status or condition 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.

3.7 Recipient represents that the Project will be performed in the State of Maine and that the Incentive Award will be expended solely for energy efficiency improvements, conservation measures, and carbon reduction initiatives in the State of Maine. Recipient acknowledges that Equipment and measures funded in whole or in part through the Incentive Award are intended only for installation and use at the Recipient's Project location specified in the Application and shall not be resold, transferred, or moved from the Project location without the prior written approval of the Trust.

3.8 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.

3.9 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: (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 in 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; (v) Recipient's insolvency, receivership, assignment for the benefit of creditors, foreclosure, or voluntary or involuntary bankruptcy; or (vi) 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 by any governmental authority or court of competent jurisdiction, 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, including costs of collection and recovery of the Incentive Award funds and those costs incurred or paid by the Trust to protect, preserve, collect, lease, sell, repair, improve, advertise, locate, take possession of, liquidate, or otherwise deal with any collateral securing Recipient's obligations under 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. INSURANCE; INDEMNITY; DAMAGES LIMITATION.**

6.1 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 funded in whole or in part by an incentive or award 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. This provision survives termination or expiration of this Agreement.

6.2 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, 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.

6.3 The Trust's sole obligation and total liability under this Agreement will be limited to paying the Incentive Award amounts specified in Recipient's Project Award Notification Letter that are properly due and payable under the terms of this Agreement. 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. Nothing in this Agreement shall be construed as a waiver or limitation of the Trust's immunity from or limitation of liability as a government entity, which immunities and limitations of liability the Trust hereby expressly retains. No person or entity that is not a party to this Agreement may assert any right or make any claim under this Agreement. This provision survives termination or expiration of this Agreement.

## 7. MISCELLANEOUS PROVISIONS.

7.1 Data in Support of Energy Savings and Emissions Reductions. The Trust may access Recipient's utility data to analyze program energy saving and greenhouse gas emission reduction impacts. Recipient grants permission to the Trust or its agents to access facilities and records and to collect data needed to measure and verify electricity savings and fuel reductions (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.

7.2 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.

7.3 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.

7.4 Measurement and Verification. Recipient shall allow independent third-party verification of Project completion and energy savings 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 efficiency measures, reduction in greenhouse gas production, and reduction in consumption of electricity achieved by the Project. Recipient shall conduct and cooperate in such auditing and reporting as may be necessary to assess performance of the Project and to provide information as may be necessary or useful for the Program.

7.5 Capacity Resources; Credits; Forward Capacity Revenue. It is understood that the Project is intended to achieve certain energy efficiencies and reductions in electricity, gas and/or other fuel 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.

7.6 Vendor or Contractor Selection; 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 may select any vendor or contractor to provide the equipment and perform the work contemplated by this Agreement. The Trust, however, reserves the right to prohibit specific vendors or contractors from Program participation.

7.7 Removal of Existing Equipment. If the Incentive Award from the Trust is intended to fund the replacement of inefficient equipment, Recipient agrees, as a condition of participation in the Program, to remove and dispose of the equipment being replaced by the efficiency measures installed or implemented under this Agreement in accordance with all applicable laws. Recipient agrees not to reinstall any of the replaced equipment anywhere in the State of Maine or transfer it to any other party for installation in the State of Maine.

7.8 Measure Life. It is the express intention of the Parties that the Equipment and efficiency measures funded in whole or in part with the Incentive Award shall be used for the purposes intended under the Program and this Agreement, and that all such efficiency measures and Equipment funded by the Trust will be used for their rated useful life. By accepting an Incentive Award, Recipient hereby agrees that it will not discontinue use of the installed efficiency measures and Equipment without prior written approval from the Trust. Any authorized transferee or assignee of this Agreement or the Equipment shall be bound by the obligation to keep the efficiency measures and Equipment in place and in use pursuant to the terms of this Agreement.

7.9 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 equipment or efficiency measures funded with the Incentive Award, without the prior express written consent of the Trust. The Trust may impose reasonable conditions on any transfer or assignment. Any purported transfer or assignment without prior written consent of the Trust shall be null and void.

7.10 Records. Recipient shall make and 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.

7.11 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. Incentives received by Recipient may be taxable by the federal, state, and local government. Recipient must provide their tax identification number for payment processing. Incentive Award payments in excess of \$600 made to unincorporated entities will be reported by the Trust on IRS Form 1099-MISC.

7.12 Governing Law; Entire Agreement. 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. This Agreement contains the entire Agreement of the parties and supersedes any prior discussions, understandings, and agreements, whether oral or in writing. The Agreement may be amended only in writing signed by the parties. 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.