

**EFFICIENCY MAINE TRUST**  
**INCENTIVE AWARD AGREEMENT FOR ENERGY AUDITS**  
**FOR LONG-TERM CARE FACILITIES**

THIS AGREEMENT, effective as of [REDACTED] (the "Effective Date"), is made by and between Efficiency Maine Trust, an independent quasi-state agency of the State of Maine ("Trust") and [REDACTED], a [corporation/limited liability company] organized and existing under the laws of the State of [REDACTED], federal tax identification number [REDACTED], with a place of business located at [REDACTED] ("Recipient"). The Trust and the Recipient are each a "Party" and collectively, the "Parties."

WHEREAS, the Trust is the subrecipient of certain funds granted to the State of Maine Governor's Energy Office ("GEO") by the United States Department of Energy ("DOE") which funds were appropriated under the Infrastructure Investment and Jobs Act ("IIJA"), specifically the Energy Efficiency Revolving Loan Fund ("EE RLF") program (the "EE RLF Program Funds"); and

WHEREAS, the EE RLF Program Funds must be used to provide eligible recipients with loans and/or grants to finance energy audits and/or energy efficiency upgrades or retrofits, pursuant to that Memorandum of Agreement, effective December 5, 2024, between the Trust and GEO; and

WHEREAS, the Trust will grant awards (each an "Award") to entities and individuals that receive a loan through the Trust's Energy Audit Loans for Long-Term Care Facilities Program (the "Energy Audit Loan Program") to finance the performance of a whole-building energy audit (the "Energy Audit") and that subsequently complete one or more of the energy efficiency upgrades or retrofits to the Building's heating, ventilation, and air-conditioning or water heating systems that were recommended in the Energy Audit and that are eligible for a project incentive under the one of the Trust's commercial and industrial (C&I) programs (each an "Upgrade");

WHEREAS, Recipient acquired a loan through the Energy Audit Loan Program (the "Loan") to finance the performance of an Energy Audit on an eligible licensed senior long-term care facility owned or leased by Recipient (the "Building") on certain property located at [REDACTED] (the "Property"), as evidenced by a certain Loan Agreement between the Trust and Recipient dated [REDACTED], 202[REDACTED] (the "Loan Agreement"); and

WHEREAS, Recipient completed the Energy Audit or intends to do so following the Effective Date of this Agreement; and

WHEREAS, the Recipient has subsequently completed one or more of the Upgrades (the "Project") or intends to do so following the Effective Date of this Agreement; and

WHEREAS, Recipient submitted an application ("Recipient's Application") to receive an Award; and

WHEREAS, the Trust, based on the representations contained in Recipient's Application and Recipient's covenants and commitments contained in this Agreement, has decided to make an Award conditionally available to Recipient subject to completion of the Project; and

WHEREAS, in consideration of the conditional grant of the Award, and subject to the terms of this Agreement, Recipient represents and warrants that the Energy Audit and Project were performed in accordance with the terms of this Agreement or, in the event that the Energy Audit and/or Project have not been completed as of the Effective Date of this Agreement, that they will be performed in accordance with the terms of this Agreement; and

WHEREAS, Recipient represents that it is an “Eligible Recipient” of the Award contemplated by this Agreement, meaning an entity eligible to receive a grant using EE RLF Program Funds, which is limited to a business, nonprofit organization, or a public building that satisfies *all three* of the following: (i) Conducts a majority of its business in the State of Maine; (ii) Owns or operates 1 or more commercial buildings or commercial space within a building that serves multiple functions, such as a building for commercial and residential operations; and (iii) has fewer than 500 employees; and

WHEREAS, Recipient acknowledges that the Award to be made under this Agreement will be made by the Trust using EE RLF Program Funds, and Recipient further acknowledges that it is required to comply with certain federal laws and abide by certain contract provisions required in connection with the receipt of federal awards in order to be eligible for receipt of the Award.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the Parties agree as follows.

**1. ENERGY AUDIT AND PROJECT PERFORMANCE.**

- 1.1 Recipient certifies that all work and services undertaken, performed, provided, and completed and all labor, equipment, materials, and deliverables provided in connection with the Energy Audit and Project satisfy the requirements of this Agreement or, in the event such work, services, labor, equipment, materials, and/or deliverables have not been undertaken, performed, provided, and/or completed as of the Effective Date of this Agreement, that they will be undertaken, performed, provided, and completed in a manner that satisfies the requirements of this Agreement. Any terms and conditions that may appear in acknowledgements, invoices, or other documents of Recipient have no force or effect with respect to this Agreement and will not serve to alter, amend, or modify this Agreement unless the Parties have expressly agreed to such new or additional terms in writing.
- 1.2 Recipient certifies that the performance of the Energy Audit complied in all respects with the requirements of the Loan Agreement or, in the event that performance of the Energy Audit has not been completed as of the Effective Date, that performance of the Energy Audit will comply in all respects with the requirements of the Loan Agreement, and without limiting the generality of the foregoing:
  - (a) The Energy Audit was performed on the entire Building.
  - (b) The Energy Audit was an ASHRAE Level II audit or its substantial equivalent.
  - (c) The Energy Audit determined the overall consumption of energy of Building.
  - (d) The Energy Audit identified and recommended lifecycle cost-effective opportunities to reduce the energy consumption of the Building, including through energy efficient lighting; heating, ventilation, and air conditioning systems; windows; appliances; and insulation and building envelopes.
  - (e) The Energy Audit estimated the energy and cost savings potential of the opportunities identified in subsection (d) of this Section 1.2 using energy audit software that uses BuildingSync (e.g., ASHRAE, Audette, BrightPower, Buildee, AECOM, PSD, Maalka, Brand New Box, etc.) and is approved by the United States Department of Energy (“Approved Audit Software”).
  - (f) The Energy Audit identified the period and level of peak energy demand for the Building and the sources of energy consumption that are contributing the most to that period of peak energy demand.
  - (g) The Energy Audit recommended controls and management systems to reduce or distribute peak energy consumption.

- (h) The Energy Audit estimated the total energy and cost savings potential for the Building if all recommended upgrades and retrofits are implemented, using Approved Audit Software.
  - (i) The Energy Audit was performed by, or subcontracted through, a contractor who could have been found using the "Find a Qualified Partner" tool on the Trust's web page for Qualified Partner program information: <https://www.efficiencymaine.com/at-work/qualified-partners/> ("Qualified Partner") at the time the Energy Audit was performed.
  - (j) The Energy Audit complied with all applicable Federal Funding Requirements (as defined in the Loan Agreement).
- 1.3 Recipient certifies that the performance of the Project complied in all respects with the following requirements or, in the event that performance of the Project has not been completed as of the Effective Date, that performance of the Project will comply in all respects with the following requirements:
  - (a) The Upgrades were recommended in the Energy Audit.
  - (b) The Upgrades satisfy at least one (1) of the criteria in the Home Performance Assessment used in the Energy Star program established under Section 6294a of Title 42 of the United States Code.
  - (c) The Upgrades improve, with respect to the Building, the physical comfort of the Building or its occupants, the energy efficiency of the Building, or the air quality of the Building.
  - (d) The Upgrades are lifecycle cost-effective and either reduce the energy intensity of the Building or improve the control and management of energy usage of the Building to reduce demand during peak times.
  - (e) The Upgrades are made to either the Building's heating, ventilation, and air-conditioning (HVAC) systems or its water heating systems.
  - (f) The Upgrades are eligible for a project incentive under one of the Trust's C&I programs.
  - (g) The Project was completed by a contractor who was a Qualified Partner of the Trust at the time the Project was being done and all suppliers and vendors of materials and equipment required for the Project were either Qualified Partners or subcontracted through a Qualified Partner.
  - (h) If the Recipient financed the Project, in whole or in part, by obtaining a loan from the Trust under the Long-Term Care Electrification Retrofits Loan Program, then Recipient shall have complied with all terms of the loan agreement evidencing that loan.
- 1.4 Recipient further acknowledges that it is bound by the requirements of Schedule A attached hereto and incorporated herein by reference.
- 1.5 Recipient acknowledges that the source of the Award is the EE RLF Program Funds and, as such, the Recipient is required to observe certain federal requirements, including but not limited to those set out in Schedule B attached hereto and incorporated by reference herein (the "Federal Requirements"). Recipient certifies that the performance of the Energy Audit complied in all respects with the Federal Requirements, or in the event that the Energy Audit has not been performed as of the Effective Date, that the performance of the Energy Audit will comply in all respects with the Federal Requirements. For the avoidance of doubt, Schedule B is not a comprehensive list of potentially applicable federal requirements, and Borrower ultimately bears the responsibility for determining what federal requirements are applicable and ensuring compliance with those that are.

## **2. TERM; TERMINATION**

2.1 This Agreement shall commence on the Effective Date and shall continue for twelve (12) months unless the Award is sooner disbursed or terminated in accordance with the provisions of this Agreement (the "Term"). Notwithstanding the foregoing, the Trust may, in its sole and exclusive discretion, extend the Term for such periods as the Trust considers desirable, in its sole and exclusive discretion, by delivering a signed writing to Recipient prior to the expiration of the Term or any prior extension thereof.

2.2 The source of the Award is the EE RLF Program Funds. If the EE RLF Program Funds are reallocated or otherwise become unavailable to fund this Agreement, the Trust may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The Trust makes no commitment to pay the Award from other Trust, agency, or state funds for any reason and the Recipient expressly waives any right to demand or receive payment from any such non-designated funds.

## **3. AWARD AND FUNDING DISBURSEMENTS.**

3.1 In consideration of Recipient's completion of the Project and certification that the requirements under Section 1 have been met with respect to the completed performance thereof, the Trust agrees to provide Recipient an Award in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_), which is the original principal amount of the Loan. For the avoidance of doubt, the Trust will not provide any amount of the Award to the Recipient until the Project is complete and the certifications in Section 1 can be made with respect to the completed performance of the Project.

3.2 Recipient shall expend Award funds only for the purpose of paying to Lender the original principal amount of the Loan. Recipient authorizes the Trust to offset and apply the Award against any unpaid principal owed on the Loan in satisfaction thereof and the Trust shall remit the balance of the Award to the Recipient for any Loan principal payments previously made by Recipient. Recipient represents and agrees that the Award will not be used for personal, family, or household purposes.

## **4. RESERVED.**

## **5. RECIPIENT ACKNOWLEDGEMENTS AND REPRESENTATIONS.**

5.1 Recipient acknowledges that funding of the Award is provided for payoff of the Loan. Award funds must be used in accordance with this Agreement. Recipient and its agents and contractors may be subject to audit in connection with the receipt and use of Award funds. Recipient agrees that, if it or one or more of its contractors fails to materially comply with an applicable and material requirement governing use of the Award funds, the Trust may withhold or suspend, in whole or in part, the disbursement of Award funds and recover all misspent funds following an audit.

5.2 Recipient represents that it is authorized to conduct business in the State of Maine, that it has been authorized to do so since at least the time that the Loan Agreement was signed, 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 that the execution and delivery of this Agreement has been duly authorized by all necessary actions of its directors, trustees, partners, members, or managers as appropriate.

5.3 Recipient represents that it is an "Eligible Recipient" of the Award contemplated by this Agreement, as defined in the Preamble to this Agreement.

5.4 Recipient represents that it is eligible to receive the Award and that it is not suspended, debarred, or disqualified from receiving contracts, grants, awards, or other appropriations in Maine, in any other state, or by the federal government.

5.5 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.

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

5.7 Recipient represents that there has been no material adverse change in the business, operations, or financial condition of Recipient since the Effective Date of the Loan Agreement. Recipient shall notify the Trust of any material change in Recipient's legal status, financial status, corporate status, or any other change in status that could have a material adverse effect on Recipient's ability to make the certifications in Section 1.

5.8 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 this Agreement.

5.9 Recipient acknowledges that the services funded in whole or in part through the Award are intended to be performed in the Building at the Property within the State of Maine and shall not be performed anywhere but in the Building or otherwise on the Property without the prior written approval of the Trust.

5.10 Recipient acknowledges that a material breach of any representation contained in this Agreement, 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 this Agreement and the Award, require the immediate reimbursement of any Award amounts previously disbursed, and may result in Recipient's suspension or debarment from participation in Trust programs.

5.11 Recipient's representations constitute continuing representations throughout the Term.

5.12 Recipient acknowledges and confirms the Recitals set forth in the Preamble to this Agreement.

## **6. BREACH**

6.1 The failure of Recipient to perform any of its obligations in accordance with this Agreement, in whole or in part, in a timely and satisfactory manner shall be a breach, as shall any representation, warranty, or certification turning out to be false in any respect.

6.2 In the event of a breach, the Trust shall give written notice of such breach to the Recipient. If the Recipient does not cure the breach, at its sole expense, within thirty (30) days after the delivery of written notice, the Trust may exercise any of the remedies described in Section 7 of this Agreement. If the nature of the breach is such that it cannot reasonably be cured within such thirty (30) day period, Recipient shall have such additional time as may be reasonably required, but not to exceed sixty (60) days, to cure the breach, provided Recipient commences to cure within the thirty (30) days period and is proceeding to cure with diligence and continuity. Notwithstanding any provision of this Agreement to the contrary, the Trust, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement, in whole or in part, or institute any other remedy in this Agreement in order to protect the public interest of the State.

## **7. REMEDIES**

7.1 If Recipient is in breach under any provision of this Agreement and fails to cure such breach, the Trust, following any applicable notice and cure period set forth in Section 6, shall have all of the rights and remedies set forth in this Section 7 in addition to all other rights and remedies set forth in this Agreement or otherwise available at law or in equity.

7.2 In the event of Recipient's uncured material breach, the Trust may terminate this Agreement or any part of this Agreement in a writing provided to Recipient.

7.3 The Trust reserves all rights and remedies available at law or in equity in the event of an uncured breach of this Agreement by Recipient including, without limitation, the right to demand reimbursement of all Award funds disbursed under this Agreement, and upon such demand Recipient shall promptly so reimburse the Trust. Without limiting the foregoing, in the event that this Agreement is terminated as a result of the Recipient's breach or default, the 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 Award funds. 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.

## **8. MISCELLANEOUS PROVISIONS.**

8.1 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 the State of Maine and Recipient hereby agrees to the exclusive jurisdiction of the state and federal courts located in the State of Maine for the resolution of disputes relating to this Agreement.

8.2 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 greatest extent possible. The invalidity or unenforceability of any particular provision or part 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.

8.3 This Agreement, along with the Schedules 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 therein or in a written amendment 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 in 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, at law, or in equity.

8.5 All notices, reports, correspondence and related submissions from the Recipient shall be submitted to:

Name:	_____
Title:	_____
Address:	151 Capitol Street, Suite 4 Augusta, Maine 04330-6262
Telephone:	_____
E-mail:	_____

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 Term. He has authority to curtail services if necessary to ensure proper execution and compliance. He shall certify to the Trust when payments under the Agreement are due and the amounts to be paid. He shall make decisions on all claims of the Recipient, subject to the approval of the Executive Director of the Trust.

8.6 Recipient address for notices under this Agreement:

Name:	
Title:	
Organization	
Address:	
Telephone:	
E-mail:	

8.7 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.

8.8 This Agreement may be executed in counterparts, each of which is deemed an original, but all of which constitute one and the same agreement. Delivery of an executed counterpart signature page of this Agreement, by facsimile, electronic mail in portable document format (.pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, has the same effect as delivery of an executed original of this Agreement.

8.8. This Agreement shall not be binding on the Trust until executed and delivered by the Executive Director of the Trust.

8.9. This Agreement may be executed by the manual or electronic signature of a party. Each party agrees that the electronic signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000 (15 U.S.C. §§ 7001 to 7031) and the Uniform Electronic Transactions Act (UETA) (10 M.R.S. §§ 9401 to 9420).

*{Signature Page Follows}*

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

**EFFICIENCY MAINE TRUST**

By:

\_\_\_\_\_  
Michael Stoddard, Executive Director

Date: \_\_\_\_\_

**XXXXXXXX**

By:

\_\_\_\_\_  
**XXXXXX, XXXXXXXXXXXX**

Date: \_\_\_\_\_



## SCHEDULE A

### GENERAL TERMS AND CONDITIONS

1. INDEPENDENT CONTRACTOR. Recipient is an independent contractor with respect to all work or services performed under this Agreement. Recipient has no authority to represent or bind the Trust in any manner. Recipient shall be solely responsible for the performance and conduct of its employees, agents, and contractors.
2. ASSIGNMENT. Recipient shall not assign or otherwise transfer or dispose of its rights, interest, duties, or obligations under this Agreement, without the prior express written consent of the Trust, which may be granted, conditioned, or denied in the Trust's reasonable discretion. Any purported transfer or assignment without the 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. The provisions of 5 MRSA § 784 are incorporated herein by reference and Recipient shall cause 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 Term 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 Term any other personnel who are or have been at any time during the Term 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 Term 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. REPORTING; RECORD RETENTION AND INSPECTION. Recipient shall make and maintain all such documents and records reasonably necessary to establish proper performance of the Energy Audit and Project and to support all requests for payment under this Agreement. Recipient shall make and retain all Energy Audit and Project records that may be reasonably relevant to Recipient's performance of its obligations under this Agreement (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, during regular business hours and upon at least forty-eight (48) hours' notice to Recipient, 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, and shall contractually require its contractors and agents to, 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 for performance of the Agreement throughout the Term.
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) (each a "Claim" and collectively, "Claims") made against or suffered or incurred by the Trust resulting from or arising out of Recipient's performance of this Agreement, the Energy Audit, or the Project. 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, the Energy Audit, or the Project; (ii) personal injury, death, or property damage suffered or incurred by any person or entity arising from the Recipient's or its agent's performance (act or omission) of this Agreement, the Energy Audit, or the Project, including claims of Recipient's employees, agents, or contractors; and (iii) claims arising or resulting from Recipient's breach of this Agreement or violation of law. Recipient's indemnity obligations shall apply to the full extent of the negligence or misconduct of Recipient or those for which it is legally responsible and shall apply without regard to any immunity that might otherwise be accorded Recipient under the workers' compensation laws. Recipient will not be obligated to indemnify for any Claim to the extent caused by the negligence or willful misconduct of the Trust or its officers, directors, trustees, agents, and employees. This indemnification is intended to be as broad as the law allows.
11. NOTICE OF CLAIMS. Recipient shall give the Agreement Administrator prompt notice in writing of any legal action or suit threatened or filed related in any way to the Agreement or Project or which may affect the Recipient's performance of the Agreement or the Project.
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 Award and the Property. Recipient is solely responsible for payment of all excise, sales, use, property, employment, income and other taxes and assessments relating to the Property, Energy Audit, Project, and Recipient's business operations.
14. INSURANCE. Recipient shall procure and maintain commercial general liability insurance with coverage for the activities and risks associated with the Energy Audit and Project and with coverage

limits sufficient to protect itself from claims arising from the Energy Audit or Project. Recipient shall procure and maintain workers' compensation insurance coverage as required under Maine law. Prior to disbursement of any 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. 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.
16. 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.
17. RESERVATION OF IMMUNITIES AND LIMITATION OF LIABILITY. The Trust is a quasi-state agency and a 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 as a governmental entity or otherwise, 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.), any state or federal statute, the common law, or any other privileges or immunities as may be provided by law. In no event shall the Trust be liable or responsible to the Recipient for any indirect, incidental, consequential, or exemplary damages of any kind.
18. NO THIRD-PARTY BENEFICIARIES. There are no express or intended third-party beneficiaries under this Agreement. No person or entity that is not a party to this Agreement may assert any right or make any claim under this Agreement.
19. CONFLICTING REQUIREMENTS. If any term or condition in this Schedule A directly conflicts with any term or condition contained in Schedule B (Provisions for Non-Federal Entity Contracts Under Federal Awards), the terms and conditions of Schedule B shall control.
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. Recipient shall, upon request of the Trust and at the Trust's own expense, display such mutually agreed upon signage or other notices at each EV Charging Station as may be reasonably required by the Trust acknowledging the support of the Trust, the Maine Department of Transportation, and/or State of Maine.
21. DATA IN SUPPORT OF PROGRAM. Recipient grants authorization to the Trust or its agents to access facilities and to collect data needed to measure and verify usage and operation of equipment and measures funded with the Incentive Award.

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 directly related agreement as reasonably 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. 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 performance and utilization 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 efficacy of 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.
25. CONFIDENTIALITY AND DATA SECURITY. All records and information given to the Recipient by the Trust whether in verbal, written, electronic, or any other format, shall be regarded by the Recipient as confidential information.

Recipient shall keep confidential, and shall contractually require all of its employees, agents, and contractors to keep confidential, all Trust records and information, unless those Trust records are publicly available. Recipient shall not, without prior written approval of the Trust, use, publish, copy, disclose to any third party, or permit the use by any third party of any Trust confidential records and information except as otherwise stated in this Agreement, as permitted by law, or approved in writing by the Trust. Recipient shall promptly forward any request or demand for Trust records or information to the Trust's Agreement Administrator.

Recipient shall use, hold, and maintain Trust confidential records and information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality and security of all Trust confidential records and information wherever located. Recipient shall provide the Trust with reasonable access, subject to Recipient's reasonable security requirements, for purposes of evaluating Recipient's compliance with these requirements. Upon the expiration or termination of this Agreement, Recipient shall return Trust confidential records and information provided to Recipient or destroy such Trust confidential records and information and certify to the Trust that it has done so, as directed by the Trust. If Recipient is prevented by law or regulation from returning or destroying Trust confidential records and information, Recipient warrants it will maintain the confidentiality of, and cease to use, such Trust confidential records and information.

If Recipient becomes aware of any accidental or deliberate event that results in or constitutes an imminent threat of unauthorized access, loss, disclosure, disruption, or destruction of any Trust confidential records or information, it shall notify the Trust promptly and, at its expense, take prompt steps to prevent or remediate such loss.

The Trust shall have the right, upon at least forty-eight (48) hours' notice to the Recipient and during normal business hours, to audit, review, and inspect the Recipient's records and procedures for compliance with these confidentiality provisions.

26. ADDITIONAL CONTRACTING REQUIREMENTS. All requirements, restrictions, and obligations regarding the use of State or Trust funds and 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 contractually require its contractors to comply with all such requirements, restrictions, and obligations.

27. 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, indemnity, and remedies, shall survive the termination or expiration of this Agreement.

## **SCHEDULE B**

### **CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS**

Efficiency Maine Trust (the “Trust”) is a Subrecipient, through the State of Maine Governor’s Energy Office (“GEO”), of certain federal funds from the United States Department of Energy (“DOE”) authorized under the Infrastructure Investment and Jobs Act (“IIJA”), including funds established under the Energy Efficiency Revolving Loan Fund Program (the “EE RLF Program Funds”). The Energy Audit to be completed and the equipment and materials to be provided under this Agreement are funded through these EE RLF Program Funds and, as such, the Recipient is required to observe certain federal requirements described in Appendix II to 2 CFR Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. Further, the Recipient is required to observe certain additional contract provisions as a condition for receiving EE RLF Program Funds.

To the extent applicable to the Energy Audit funded by the Award, Recipient shall comply with each of the following additional contract provisions, which provisions are expressly incorporated into and made part of the Agreement. The extent to which the following additional contract provisions are applicable to the Energy Audit funded by the Award depends on whether the project satisfies the statutory and/or regulatory applicability provisions. Although the Trust has endeavored herein to provide the Recipient with general guidelines to aid in the assessment of these provisions’ applicability to the Agreement, the Recipient ultimately bears the responsibility for determining the extent to which these legal requirements are applicable and ensuring compliance with those that are. References in the required federal contract provisions to “contractor” shall include the Recipient, any Qualified Partner that Recipient contracts with to carry out the Energy Audit, and any of such Qualified Partner’s subcontractors, vendors, or suppliers who performs work or provides goods or materials necessary for completion of the Energy Audit. Furthermore, references to the “contract” shall include the Agreement, the agreement between Recipient and any Qualified Partner(s) regarding the Energy Audit, and any agreement between any such Qualified Partner and their subcontractors, vendors, or suppliers regarding the Project. Borrower shall ensure that these required contract provisions are included in their contracts with any contractors performing work on the Energy Audit.

#### **Uniform Grant Guidance Requirements** (2 C.F.R. Part 200, Appendix II)

**Procurement of Recovered Materials** (2 C.F.R. Part 200, Appendix II, § J (citing 2 C.F.R. § 200.323; Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962)) (This provision applies to Recipient and to Recipient’s contractors).

When procuring items necessary to the performance of this contract, the purchase price of which exceed \$10,000 or which were acquired during the preceding fiscal year in a quantity worth more than \$10,000, the Recipient and its contractors shall procure only items designated in the guidelines of the Environmental Protection Agency at 40 CFR part 247 that contain the highest percentage of recoverable materials practicable, consistent with maintaining a satisfactory level of competition.

The Recipient and its contractors also agree to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and recovery Act of 1976 as amended, including by procuring solid waste management services in a manner that maximizes energy and resource recovery, and by establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

The Recipient and its contractors shall, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage:  
<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

Prohibition on Contracting for Covered Telecommunications Equipment or Services (John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, § 889(b)(1), 132 Stat. 1917 (2018); 2 C.F.R. § 200.216) (This provision applies to the Recipient because the Recipient is a subrecipient of federal grant funds).

Recipient and Recipients' contractors are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain covered telecommunications equipment or services;
- (2) Extend or renew a contract to procure or obtain covered telecommunications equipment or services; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services.

As described in Public Law 115-232, section 889, "covered telecommunications equipment" means any of the following:

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- (2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment;
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country;

(5) Systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Domestic Preferences for Procurements (2 C.F.R. Part 200, Appendix II, § L (citing 2 C.F.R. § 200.322)) (This provision applies to the Agreement because the Agreement is a federally funded contract).

To the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. This requirement must be included in all contracts and purchase orders for work or products.

For purposes of this clause:

*Produced in the United States* means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

*Manufactured products* mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

### **EE RLF Program Requirements**

Performance of Work in United States (Term 9 of the Bipartisan Infrastructure Law (BIL) Special Terms and Conditions)

All work performed under this Agreement must be performed in the United States unless the DOE provides a waiver allowing a portion of the work to be performed outside the United States under limited circumstances, which waiver must be obtained from the DOE prior to any work being conducted outside the United States. This requirement does not apply to the purchase of supplies and equipment; however, the Recipient should make every effort to purchase supplies and equipment within the United States. The Recipient must flow down this requirement to its contractors and require them to flow down the requirements to their subcontractors.

If the Recipient fails to comply with this requirement, the DOE may deny reimbursement for the work conducted outside the United States and such costs may not be recognized as allowable Recipient cost share regardless if the work is performed by the Recipient, subrecipients, vendors or other project partners.

Foreign National Involvement (Term 10 of the BIL Special Terms and Conditions)

Recipient agrees to provide, and to contractually require its contractors and subcontractors, as applicable, to provide the Trust with specific information, the volume and type of which may depend on various factors associated with the Agreement, about each foreign national that Recipient, or its contractors and subcontractors, anticipate involving in the performance of the Energy Audit. A “foreign national” is defined as any person who is not a citizen of the United States by birth or naturalization.

Recipient further agrees to perform, and to contractually require its contractors and subcontractors, as applicable, to perform any measures required by DOE to mitigate or



eliminate any risks to economic or national security interests that DOE determines are posed by the involvement of the foreign national(s). The list of countries that are currently designated as foreign countries of risk is as follows: Iran, North Korea, Russia, and China; however, this list is subject to change.

Recipient and Recipient's contractors and subcontractors may submit their disclosures directly to DOE if the disclosures contain business confidential information.

Lobbying (Term 14 of the BIL Special Terms and Conditions)

In addition to those prescriptions on lobbying contained in statutes and regulations, Recipient agrees that it will not expend, directly or indirectly, any amount of the Award to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913.

Site Visits and Recipient Administrative Organizational Reviews (Term 25 of the BIL Special Terms and Conditions)

Recipient must provide, and must require its contractors and subcontractors to provide, authorized representatives of DOE with reasonable access to facilities, office space, resources, and assistance for their safety and convenience in the performance of site visits, provided that DOE makes reasonable efforts to ensure that these site visits do not interfere with or unduly delay work on the Energy Audit.

Interim Conflict of Interest Policy for Financial Assistance Policy (Term 47 of the BIL Special Terms and Conditions)

The DOE interim Conflict of Interest Policy for Financial Assistance (COI Policy) can be found at <https://www.energy.gov/management/pf-2022-17-department-energy-interim-conflict-interest-policy-requirements-financial>. This policy is applicable to all non-Federal entities applying for, or that receive, DOE funding by means of a financial assistance award (e.g., a grant, cooperative agreement, or technology investment agreement) and, through the implementation of this policy by the entity, to each Investigator who is planning to participate in, or is participating in, the project funded wholly or in part under the DOE financial assistance award. Recipient must comply with DOE's Interim COI Policy and contractually require its contractors and subcontractors to do the same.

Organizational Conflict of Interest (Term 48 of the BIL Special Terms and Conditions).

Organizational conflicts of interest are those where, because of relationships with a parent company, affiliate, or subsidiary organization, a person is unable or appears to be unable to be impartial in conducting procurement action involving a related organization (2 CFR 200.318(c)(2)). The Recipient must disclose in writing any potential or actual organizational conflict of interest to the Trust. The Recipient must provide the disclosure prior to engaging in a procurement or transaction using EE RLF Program Funds with a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe. For a list of the information that must be included in the disclosure, see Section VI of the DOE interim Conflict of Interest Policy for Financial Assistance at <https://www.energy.gov/management/departments-energy-interim-conflict-interest-policy-requirements-financial-assistance>. If the effects of the potential or actual organizational conflict of interest cannot be avoided, neutralized, or mitigated, the Recipient must procure goods and services from other sources when using project funds. Otherwise, the

Trust may terminate the Award unless continued performance is determined by DOE to be in the best interest of the federal government. If the Recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the Recipient must maintain written standards of conduct covering organizational conflicts of interest.