

**EFFICIENCY MAINE TRUST**

**TERMS AND CONDITIONS**  
Electric Vehicle Supply Equipment Program (Level 2)  
Round 4 – Category 1

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 grant recipient named in the Project Award Notification Letter (“Recipient”).

The Trust is the administrator of certain funds allotted from the Volkswagen Environmental Mitigation Trust (the “VW Settlement Funds”) to develop electric vehicle (EV) charging infrastructure pursuant to the Zero Emission Vehicle Supply Equipment provisions of the Maine Beneficiary Mitigation Plan and pursuant to the Memorandum of Agreement, effective January 1, 2018 (Contract: 2018-EMT-MDOTMOA) between the Maine Department of Transportation (as the designated Maine Beneficiary) and the Trust to administer Maine’s Electric Vehicle Supply Equipment Initiative.

The Trust has issued a Request for Proposals, RFP EM 013-2021, (the “RFP”) seeking proposals for installation and operation of Level 2 EV charging equipment designed to meet certain program criteria and to advance Maine’s Electric Vehicle Supply Equipment Initiative (the “Program”). The Recipient has submitted a proposal (the “Proposal”) in response to the RFP for funding of a certain project under the Program (the “Project”). The Trust has determined that the Recipient’s Proposal satisfies the Program criteria and, in reliance upon Recipient’s representations contained in the Proposal 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 Proposal and Project Award Notification Letter (the “Grant Award”). Recipient acknowledges that the Grant Award is subject to these Terms and Conditions and Recipient agrees to comply with these Terms and Conditions in consideration of receipt of the Grant Award

**1. GRANT AWARD: DISBURSEMENTS.**

- 1.1 The Trust will provide Recipient a Grant Award as set forth in the Project Award Notification Letter to be used solely for eligible costs as outlined in the RFP in connection with the acquisition and installation of Level 2 EV charging station equipment consistent with the Trust’s Program and Recipient’s Proposal. The Trust reserves the right to adjust the Grant Award as necessary to maintain compliance with the Trust’s established Program funding criteria and any limitations as set forth in the RFP and the 2018 EMT-MDOT MOA.
- 1.2 The Trust expects to disburse Grant Award amounts within thirty (30) days of Project completion. The Trust will not pay any Grant Award amounts until it has performed a post-installation verification or it has expressly waived this requirement for Recipient in writing. If the Trust determines that the Level 2 EV charging equipment was not installed in a manner consistent with the Proposal or Program, if unapproved equipment was installed, or if the installation is not consistent with generally accepted construction practices, the Trust may require changes before making payment. The Trust reserves the right to seek a complete refund, and Recipient shall be obligated to provide complete reimbursement to the Trust, for all Grant Award amounts paid if, at any time, the Trust learns that the approved equipment was not installed, was disconnected, was removed or relocated, or was installed at a location that was not pre-approved by the Trust in writing. In no event shall the Level 2 EV charging equipment be moved outside of the State of Maine.
- 1.3 Recipient must provide copies of all invoices and other documentation that verify the costs of purchasing and installing the approved Level 2 EV charging equipment, 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 subsidized by the Grant Award.
- 1.4 It is a condition of disbursement of the Grant Award that the Level 2 EV charging equipment, and any associated electrical components, be approved by 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.
- 1.6 Recipient shall expend Grant 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 an ineligible cost as set forth in the RFP, is contrary to this Agreement, or is contrary to 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.

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- 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 Recipient must install the Project within the time period specified in the RFP. 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, payment of the Grant Award may be delayed or denied.
- 1.10 The Trust reserves the right to make follow-up visits to Recipient's equipment installation location or facility to ensure ongoing compliance with this Agreement.

**2. STANDARDS OF PERFORMANCE.**

2.1 Recipient shall be solely responsible to (i) secure all necessary rights and licenses to install and operate the Level 2 EV charging equipment at the approved host site location; (ii) acquire all equipment and materials necessary for complete performance of the Project; and (iii) furnish or arrange for qualified licensed contractors, suppliers, service providers and other personnel as necessary for the complete 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, codes, regulations, and standards in the performance of the Project. Recipient is solely responsible for obtaining all permits, approvals, registrations and licenses as may be required for installation and operation of the Level 2 EV charging equipment.

2.3 Recipient is solely responsible for all costs, expenses, fees, taxes, and other assessments arising from or relating to the installation and operation of the Level 2 EV charging equipment, including energy charges.

2.4 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.

2.5 Installed Level 2 EV charging equipment must meet the minimum design and performance criteria, including power output capacity, specified in the RFP, which requirements are expressly incorporated in this Agreement. All equipment shall be new and unused (not refurbished). All equipment and associated electrical interconnections must be installed in a manner consistent with manufacturer recommendations and applicable code requirements.

2.6 Recipient shall maintain and keep the Level 2 EV charging equipment in operation at the approved location for a minimum of three (3) years from the date of commissioning of the equipment.

2.7 Recipient shall operate and use the Level 2 EV charging equipment funded in whole or in part with the Grant Award only for the purposes intended by the Program and this Agreement.

2.8 Recipient shall ensure that the Level 2 EV charging equipment is publicly accessible, with appropriate signage, and that installation of the Level 2 EV charging equipment is compliant with applicable ADA accessibility standards.

2.9 Recipient shall keep the Level 2 EV charging equipment in good repair and reasonably protected from damage and vandalism.

2.10 The Trust does not make any representations of any kind regarding the results to be achieved by the Project. 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 Level 2 EV charging equipment 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 the Grant Award is provided for the purposes specified in the RFP and the Program described therein and must be used in compliance with the RFP and Program requirements and all applicable regulations.

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3.2 All requirements, restrictions and obligations regarding the use of Program Grant 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 Grant Award will be used for any purpose not expressly approved in the Project Award Notification Letter.

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 Grant 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 Recipient's Proposal pertaining to the Project, since the submission of the Proposal. Recipient represents that neither the Proposal, 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 Proposal and this Agreement.

3.7 Recipient represents that the Project will be performed in the State of Maine and that the Grant Award will be expended solely for construction and operation of Level 2 EV charging equipment in the State of Maine. Recipient represents and warrants that the equipment and measures funded in whole or in part through the Grant Award 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 Grant Award, require the immediate reimbursement of any Grant Award amounts previously disbursed, and may result in Recipient's suspension or debarment from participation in Trust programs.

**4. SUSPENSION OF GRANT AWARD.**

4.1 The Trust may suspend Grant Award disbursements and payments to Recipient for: (i) Recipient's failure to comply with the terms and conditions of this Agreement; (ii) Recipient's failure to execute the Project with due diligence; 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 Grant 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 Grant 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 Program funds are de-appropriated, re-allocated or restricted by any governmental authority or court order, the Trust's authorization to operate or administer the Agreement or the Program 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.

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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 Grant 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 Grant Award. 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, 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 funded in whole or in part by a grant, 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 adequate insurance with coverage for the activities and risks associated with the Project and shall procure and maintain replacement value "all risk" property and casualty insurance covering the Level 2 EV charging equipment funded with the Grant Award.

6.3 The Trust's sole obligation and total liability under this Agreement will be limited to paying the Grant 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 and Information in Support of the Program. Recipient shall provide or allow access by the Trust to usage, utilization, energy, and performance information relating to the equipment funded in whole or in part by the Grant Award. The Trust may be required to report on the use and performance of the Level 2 EV charging equipment. 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 Grant Award, this Agreement, and the Project 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. Recipient agrees to allow independent, third-party verification of Project performance and energy utilization as may be requested by the Trust.

7.2 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.

7.3 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. In no event shall the Trust be deemed an employer, partner, or agent of Recipient or any of Recipient's personnel. Recipient shall select its own vendor or contractor to provide the equipment and perform the work contemplated by this Agreement, provided they are licensed and authorized to do business as may be required under any applicable law. In no event shall the Trust be responsible or liable for any act or omission of Recipient, its employees, agents, contractors, or vendors. The Trust reserves the right to prohibit specific vendors or contractors from Program participation.

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7.4 Measure Life. It is the express intention of the Parties that the equipment funded in whole or in part with the Grant Award shall be used for the purposes intended under the Program and this Agreement, and that all such equipment funded by the Trust will be used for its rated useful life. By accepting a Grant Award, Recipient hereby agrees that it will not discontinue use of the installed 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 equipment in place and in use pursuant to the terms of this Agreement.

7.5 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 funded with the Grant 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.

7.6 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 four (4) 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.

7.7 Taxes. Recipient shall be solely responsible for the determination and payment when due of all taxes that may be due in connection with the Grant Award and the Project, including, without limitation, income, property, excise and use taxes. Grant Awards received by Recipient may be taxable. Recipient must provide its tax identification number for payment processing. Grant Award payments in excess of \$600 made to unincorporated entities will be reported by the Trust on IRS Form 1099-MISC.

7.8 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.