



ATTACHMENT D: CONFIDENTIALITY, NON-DISCLOSURE AND PROTECTIVE AGREEMENT

This CONFIDENTIALITY, NON-DISCLOSURE AND PROTECTIVE AGREEMENT (“Protective Agreement”) is made by and between the Efficiency Maine Trust, an independent quasi-state agency of the State of Maine (“Efficiency Maine”) and [REDACTED] (the “Recipient”), each individually a “Party” and collectively, the “Parties,” as of [REDACTED], 20 [REDACTED] (the “Effective Date”).

WHEREAS, in connection with the provision or supply of work or services to or for the benefit of Efficiency Maine (the “Services”), the Recipient will have access to, review, or receive, and may compile or develop, certain business, personal, financial, technical, and other Confidential Information (as defined below) concerning the business and affairs of Efficiency Maine and of Efficiency Maine’s customers, grantees, borrowers, program service recipients, and other electric and natural gas utility customers in the State of Maine (collectively, the “Customers”); and

WHEREAS, Efficiency Maine wishes to ensure the protection of Confidential Information and restrict the Recipient’s use of Confidential Information to purposes directly connected with and necessary for the performance of the Services; and

WHEREAS, the Recipient recognizes the need to restrict disclosure and use of Confidential Information and to abide by the terms and conditions of the Efficiency Maine General Confidentiality Guidelines Memo appended as Appendix A to the Efficiency Maine Confidential Information Management Policy (“CIMS Policy”).

NOW, THEREFORE, in consideration of the above premises, as a condition of Recipient’s contract or agreement with Efficiency Maine, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

1. Confidential Information

“Confidential Information” is defined to mean records or information in any form, whether written, printed or graphic matter or any mechanical, digital or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession, custody or control of Efficiency Maine or any of its officials, employees or agents, and has been received or prepared in connection with the transaction of Efficiency Maine business or contains information relating to the transaction of public or governmental business and that is:

- (1) Designated confidential by Maine statute or otherwise is within an exception to the definition of “public records” in the Maine Freedom of Access Act, 1 M.R.S.A. § 402(3);
- (2) Individual customer information provided by a public utility, including but not limited to, a customer’s name, mailing address, e-mail address, telephone number, electricity or gas usage, or payment history, where the customer has not provided his, her or its consent to the utility’s disclosure or transfer of that information to a third-party (65-407 CMR Chapter 815, Section 4);
- (3) Subject to an Order or Protective Order of the Maine Public Utilities Commission or state or federal court restricting the use or disclosure of designated information; or
- (4) Obtained or developed by Efficiency Maine and is designated a “confidential record” under 35-A M.R.S.A. §10106 (including but not limited to: (a) a record obtained or developed by Efficiency Maine that (i) a person, including Efficiency Maine, to whom the record belongs or pertains has requested be designated confidential and that the board has determined contains information that gives the owner or a user an opportunity to obtain a business or competitive advantage over another person who does not have access to the

information, except through the trust's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the trust, to any person to whom the record belongs or pertains; or; (ii) contains information about the energy usage profile of an identifiable customer of a transmission and distribution utility in the State or an identifiable customer of a distributor of heating fuel or other energy source; and (b) a financial statement or tax return; and the social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the trust; provided however, that the record or information is not Confidential Information where an exception exists because (a) the Board determines confidentiality has been satisfactorily and effectively waived; (b) the otherwise confidential information has already lawfully been made available to the public; or (c) it is impersonal, statistical or general information.

2. Non-Disclosure. In consideration for the access to Confidential Information and the ability to perform the Services on behalf of Efficiency Maine, the Recipient shall hold all Confidential Information in trust for Efficiency Maine and in strictest confidence in accordance with the provisions of this Protective Agreement. The Recipient shall not disclose, in any manner communicate or enable, authorize, permit or acquiesce in the disclosure or communication of Confidential Information to any person or entity, including any officer, director, employee, personnel, consultant, subcontractor, agent or representative of the Recipient, except:

- (a) solely to the extent necessary to enable the Recipient to properly perform the Services and to discharge its obligations to Efficiency Maine, and then only where all of its Disclosees (as defined below) are informed of the confidential nature of the Confidential Information and are bound by provisions of confidentiality and non-disclosure to the same effect as those contained in this Protective Agreement; or
- (b) with the prior written authorization of Efficiency Maine, which authorization may be withheld in Efficiency Maine's discretion.

Recipient agrees that neither it nor its officers, directors, employees, consultants, subcontractors, agents, representatives or advisers shall transfer, access, use, or disclose to any third party any Confidential Information except in accordance with the terms of this Protective Agreement, the Efficiency Maine Confidential Information Management System Policy ("CIMS Policy") adopted by Efficiency Maine to which this Protective Agreement is Appendix B, and applicable Maine statutes, rules, regulations and orders, including any Maine Public Utilities Commission Order or Protective Order relevant to the Confidential Information. The Recipient shall notify Efficiency Maine immediately upon discovery of any unauthorized use or disclosure of Confidential Information, or any other breach of this Protective Agreement by the Recipient or its officers, directors, employees, consultants, subcontractors, agents, representatives or advisers, and will cooperate with Efficiency Maine in every reasonable way to help regain possession of the Confidential Information and prevent its further unauthorized use or disclosure.

3. Use. The Recipient may use Confidential Information only as strictly necessary for the performance of the Services and shall ensure that any of its Disclosees limit their use of the Confidential Information as strictly necessary for the performance of the Services. The Recipient may not, and shall ensure that its personnel (including subcontractors) do not, use any Confidential Information for any reason or purpose other than as authorized in this Protective Agreement.

4. Control Over Disclosees. Each person or entity to whom a Recipient discloses Confidential Information is referred to in this Agreement as a "Disclosee" of the Recipient. The Recipient shall implement, monitor, control and enforce all measures required or advisable to cause all of its Disclosees to fully observe and comply with each of the covenants and agreements contained herein. The Recipient shall cause each of its Disclosees to enter into a written confidentiality and non-disclosure agreement on terms to the same effect as those contained in this Protective Agreement confirming each such Disclosees's obligations to protect the Confidential Information from unauthorized use or disclosure, and Recipient shall provide copies of all such written acknowledgements to Efficiency Maine upon request. The Recipient will be liable for any breach of this Agreement by its Disclosees.

4. **Ownership.** No ownership or right, including any intellectual property right, is granted, licensed, or transferred to Recipient by execution of this Protective Agreement or by the disclosure of any Confidential Information to Recipient. As between the Recipient and Efficiency Maine, Confidential Information, including derivative works prepared by the Recipient, remains the sole property of Efficiency Maine or Customer, and the Recipient must keep the same at all times in its custody and subject to the Recipient's control under the terms of this Protective Agreement until returned to Efficiency Maine or Customer pursuant to this Protective Agreement.

5. **Compelled Disclosure.** If the Recipient, or any of the Recipient's Disclosees is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, the Recipient will provide Efficiency Maine with prompt notice of such request(s) so Efficiency Maine or the Customer may seek an appropriate protective order or other appropriate remedy and/or waive compliance with the confidentiality provisions of this Protective Agreement. In the event that such protective order or other remedy is not obtained, the Recipient or the Recipient's Disclosee may furnish that portion (and only that portion) of the Confidential Information which, in the written opinion of the Recipient's counsel, the Recipient is legally compelled to disclose and must exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

6. **Return of Confidential Information.** Promptly following the written request of Efficiency Maine, and immediately upon termination of the Services, the Recipient will (i) deliver to Efficiency Maine all documents or other materials furnished by Efficiency Maine or Customer to the Recipient constituting Confidential Information, including derivative works, which shall include notes or materials which incorporate or include Confidential Information, together with all copies thereof, or (ii) at the option of Efficiency Maine, destroy all such Confidential Information in circumstances and in a manner approved of by Efficiency Maine, and, if requested by Efficiency Maine, under the supervision of Efficiency Maine. If requested by Efficiency Maine, a senior officer of the Recipient will promptly certify in writing to Efficiency Maine that all Confidential Information has been returned or destroyed in accordance with the terms of this Protective Agreement.

Confidential Information (including all copies in all forms) shall be returned to Efficiency Maine or destroyed as directed by the CIMS Coordinator upon the completion of services, conclusion of service as an employee or trustee, or as otherwise directed by Efficiency Maine. If the CIMS Coordinator directs that Confidential Information be destroyed, the employee, trustee, contractor or consultant shall certify in writing that all such Confidential Information has been destroyed. Notwithstanding the foregoing, a contractor or consultant may retain copies of Confidential Information:

- (a) as required to comply with the any applicable federal, state or local law, regulation or regulatory authority to which it is subject; or
- (b) that is maintained as archive copies in a disaster recovery and/or information technology backup system, provided that such copies are adequately protected and will be destroyed on the normal expiration and destruction cycle for the archive or backup files.

In all cases, Confidential Information retained by a contractor or consultant as permitted herein shall remain confidential, shall be protected by contractor or consultant from impermissible use or disclosure, and shall be subject to all applicable statutes, regulations and orders, this CIMS Policy, and the Protective Agreement, which shall survive expiration or termination of the services.

7. **Audit Rights.** Efficiency Maine shall have the right, upon reasonable notice to the Recipient, to audit, review and inspect the Recipient's records and procedures for compliance with this Protective Agreement.

8. **Remedies.** In the event of any breach or threatened breach of this Protective Agreement, Efficiency Maine, in addition to any other remedies at law or in equity it may have, will be entitled to seek, without the requirement of posting a bond or other security, equitable relief, including injunctive relief and specific performance. Moreover, in addition to any other remedies at law or in equity Efficiency Maine may have, as stated in the CIMS Policy, any disclosure or unauthorized use of Confidential Information in violation of the Protective Agreement or the CIMS Policy by the Recipient is grounds for immediate termination of the Recipient's contract or agreement with Efficiency Maine.

9. **Governing Law.** This Protective Agreement will be governed by and interpreted in accordance with the laws of the State of Maine without regard to its conflict of law principles.

10. Amendments. This Protective Agreement may not be modified, amended, rescinded or canceled in whole or in part, except by written instrument signed by the Parties hereto which makes specific reference to this Agreement and which specifies that this Protective Agreement is being modified, amended, rescinded or canceled.

11. Severability. If any provision of this Protective Agreement is declared invalid or illegal for any reason whatsoever, then, notwithstanding such invalidity or illegality, the remaining terms and provisions of this Agreement will remain in full force and effect in the same manner as if the invalid or illegal provision had not been contained herein.

12. Waiver. No failure on the part of Efficiency Maine to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single waiver or partial exercise of any right or remedy hereunder preclude any other or a future exercise thereof or the exercise of any other right or remedy granted hereby, or by any related document, or by law.

13. Entire Agreement; Acknowledgement; No Assignment. This Protective Agreement and the General Confidentiality Guidelines Memo attached as Appendix A to the CIMS Policy contain the entire agreement and understanding between the Parties hereto relating to the subject matter hereof and supersede all other prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof. The Recipient, by executing this Protective Agreement, acknowledges that the Recipient has received a copy of the General Confidentiality Guidelines Memo attached as Appendix A to the CIMS Policy and has reviewed its contents and understands its obligations thereunder. This Protective Agreement is intended to supplement and be read in harmony with any other confidentiality and non-disclosure provision contained in any Service Agreement between the Parties and in the General Confidentiality Guidelines Memo. This Protective Agreement may not be assigned by Recipient without the prior express written consent of Efficiency Maine, which consent may be withheld in its reasonable discretion.

IN WITNESS WHEREOF, the Parties have executed this Protective Agreement through their duly authorized representatives effective as of the Effective Date set forth above.

Service Provider: _____

By: _____

Name: _____

Title: _____

Date: _____

Efficiency Maine Trust

By: _____

Name: Joy Adamson

Title: Grants Administrator

Date: _____