Enrollment No. _____ Contract No. 20_____

EFFICIENCY MAINE TRUST

PARTICIPATION AND INCENTIVE AGREEMENT
Small Battery Program

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

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

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

WHEREAS, Participant has submitted an application in response to PON EM-010-2026, Small Battery Program, for participation in the Program (the "Application"), which project is described in the Project Description in Rider A (the "Project");

WHEREAS, the Trust, in reliance on Participant's representations contained in the Application and Participant's covenants and commitments contained in this Agreement, has decided to allow Participant to participate in the Program for an opportunity to receive incentive payments for satisfaction of the Program requirements.

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

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

1.1 Relying upon Participant's representations in its Application and Participant's compliance with all terms and conditions of this Agreement, the Trust will permit Participant to participate in the Program and receive specified incentive payments as set forth in Rider B hereof ("Incentive Awards") for validated reduction in grid-supplied energy resulting from dispatches from Participant's customers' small battery energy storage system during certain peak demand hours. Participant acknowledges that payment of Incentive Award amounts is performance-based. Incentive Award payments are subject to the terms and conditions of the Program and this Agreement.

1.2 This Agreement shall commence on _____, 20__ and, unless earlier terminated in accordance with the terms hereof, shall continue for an initial Program Year from the date the Agreement commences through the next March 31st, plus ten (10) additional Program Years, or, if the Agreement commences on an April 1st, Participant's Program participation will continue for ten (10) Program Years (the "Project Period").

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

1.4 Participant acknowledges that payment of the Incentive Award is conditioned on assignment to the Trust of capacity resource credits and forward capacity market revenues resulting from the Project. Participant shall secure all necessary right, title, and interest in and to such credits from its customers for the benefit of the Trust.

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

2. **STANDARDS OF PERFORMANCE**.

2.1 Participant shall abide by the terms of this Agreement, including the terms and conditions contained in any Riders appended hereto.

2.2 Participant shall abide by applicable state, federal, and local laws, ordinances, rules, regulations, and standards in the performance of this Agreement and execution of the Project.

2.3 Participant shall keep the Trust apprised of all material developments in connection with the Project and shall consult and coordinate with the Trust, through its Agreement Administrator, as necessary in the performance of the Project.

2.4 The Trust does not make any representations of any kind regarding the results to be achieved by the Project. Neither the Trust nor its consultants are responsible for assuring that the design, engineering, or construction of the Project or installation of the energy efficiency and conservation measures is proper or complies with any particular laws, codes, or industry standards. Participant is solely responsible for the design and implementation of the Project.

3. **PARTICIPANT REPRESENTATIONS AND RESPONSIBILITIES**.

3.1 Participant 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. Participant represents that it has all requisite power and authority to execute this Agreement and perform the Project and that the execution and delivery of this Agreement and the performance of the Project have been duly authorized by all necessary action of its shareholders, directors, trustees, partners, members, or managers as appropriate.

3.2 Participant represents that it is eligible to receive the Incentive Award and that it is not suspended, debarred or disqualified from receiving state contracts, grants, awards or other appropriations and that it has filed all federal and state tax returns and reports as required by law and has paid all taxes, assessments and governmental charges due, except those contested in good faith in a proceeding with the assessing authority.

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

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

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

3.6 Participant shall provide such information and execute any additional documents, disclosures, and certifications 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 this Agreement, Program requirements, and applicable law.

3.7 Participant 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 Participant or its agents, may result in termination and revocation of Program participation and may result in Participant's suspension or debarment from participation in Trust programs.

3.8 Participant's representations constitute continuing representations.

4. **SUSPENSION OF INCENTIVE AWARD**.

4.1 The Trust may suspend Participant's participation in the Program and discontinue Incentive Award disbursements and payments to Participant for any of the following reasons:

(i) Participant's failure to comply with the terms and conditions of this Agreement, including any representation or covenant contained herein;
(ii) Participant's breach of any participation agreement with its customers; or
(iii) A material adverse change in Participant's legal, business, or financial status.

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

5. **TERMINATION OF AGREEMENT**.

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

(i) Participant's material breach of any representation, covenant, condition, or obligation under this Agreement;
(ii) Participant's violation of law;
(iii) Participant's uncured breach of obligations to its customers participating in the Program;
(iv) Participant's failure to provide any periodic or final reporting or accounting as required under this Agreement or applicable law;
(vi) Participant's insolvency, receivership, assignment for the benefit of creditors, foreclosure, or voluntary or involuntary bankruptcy; or
(vii) Any event of default identified elsewhere in this Agreement.

5.2 Without prejudice to any other rights or remedies, the Trust may terminate this Agreement upon any Event of Default by providing Participant 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 Participant with the written notice of intent to terminate. The Trust shall have no further obligation to Participant after termination.

5.3 Notwithstanding anything to the contrary in this Agreement, the Trust may terminate this Agreement, in whole or in part, in its discretion and without penalty, in the event that funds are de-appropriated, re-allocated, or restricted, the Trust's authorization to operate or administer the Agreement or the relevant program or project is withdrawn or curtailed, there is a material change in project or program conditions, or there is a material change in legislation affecting the Trust's authority or operations.

5.4 The Trust reserves all rights and remedies available at law or in equity in the event of a breach of this Agreement by Participant. Without limiting the foregoing, in the event of Participant's breach or default, Participant 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 Participant's breach of this Agreement. The various rights, remedies, options and elections of the Trust in this Agreement are cumulative and not exclusive of any other right, remedy, or power allowed or available at law or in equity.

6. **MISCELLANEOUS PROVISIONS**.

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

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

6.3 This Agreement, along with the Riders and other provisions expressly incorporated herein, contains the entire Agreement of the Parties, and neither party shall be bound by any statement or representation not contained herein or in a

written amendment or change order signed by the Trust. This Agreement, and the rights and obligations hereunder, shall inure to the benefit of the Parties and their permitted assigns. No waiver shall be deemed to have been made by any of the Parties unless expressed in writing and signed by the waiving party. The Parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the Parties which is not expressed in writing. The failure of any Party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any Party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.

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

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

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

Name:	Andy Meyer
Title:	Senior Program Manager
	Efficiency Maine Trust
Telephone:	(207) 213-4148
E-mail:	Andy.Meyer@efficiencymaine.com

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

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

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

EFFICIENCY MAINE TRUST

By: _____
Michael Stoddard, Executive Director

Date: _____

Participating Company Name

By: _____
Name and Title, Participant Representative

Date: _____

RIDER A

PROJECT DESCRIPTION

Participant shall implement and perform the Project in accordance with the requirements of PON-EM-010-2026, the terms of which are incorporated herein. For this Program, the Project is defined as a collection of small battery energy storage systems (BESS) enrolled and managed by the Participant for the purpose of discharging when called upon by the Trust.

At a minimum the Project must satisfy the following base criteria:

- Each BESS must be interconnected to the electrical grid;
- Each facility served by each BESS must be located in Maine and have a residential or business (Small General Service, or General Service) account with a Maine electric utility;
- The BESS must be able to collect and transmit hourly interval data;
- Each BESS must be UL-listed or certified by another nationally recognized testing lab and be recognized as meeting all safety requirements; and,
- Each BESS and its components must comply with all manufacturer installation requirements, applicable laws, regulations, codes, licensing, and permit requirements.

Participant shall be responsible to recruit and enroll customers to participate in the Program and confirm their agreement to discharges from their BESS when called upon by the Trust. Participant shall enter into program participation agreements with its customers, to include customer consent for access, disclosure, and use of site-specific data by the Trust for Program purposes and a grant by the customer of all right, title, and interest in any capacity resource credits produced or resulting from BESS discharges to Program Partner for the benefit of the Trust. Participant shall enroll customers in the Program by providing the Trust with: Customer name; customer phone number; customer email; name of customer's electric utility; customer's electric utility account number; installation address; and device details (manufacturer, model, battery serial number, kWh capacity, and continuous kW discharge capability) in a mutually agreed upon format.

The Trust will assign enrolled batteries to designated groups (each, a "Dispatch Group"). Participant shall dispatch customer BESS in Trust-designated Dispatch Groups when alerted by the Trust. Participant shall provide BESS performance data in a mutually agreed upon format.

Participant shall determine the amount of the dispatch incentive payments to be shared with its customers. Participant shall be solely responsible to distribute any incentive payments to its customers. Participant acknowledges that customers participating in the Program are customers of Participant only. The Trust will have no obligation to distribute any incentives to Participant's customers. Participant has no authority to bind or make any representations or commitments on behalf of the Trust. Participant is solely responsible to manage the customer relationships.

Participant shall, upon request, provide to the Trust customer contact information, customer participation agreements, and such other information as the trust may request for Program audit purposes.

RESERVATION OF FUNDS. The Trust intends to reserve funds on a Program Year basis during the Project Period for anticipated payment of Incentive Awards to Program Participants earned in that Program Year. Any reserved funds that are not earned in a Program Year are forfeited. Participant has no right or interest in any such reserved funds prior to disbursement. The Trust may choose to stop accepting new BESS systems at any time with 90 days' written notice.

Following execution of this Agreement and enrollment of customers, the Trust will call events as outlined in Rider B below. Execution of BESS dispatch events called by the Trust is the sole responsibility of the Participant. The goal of the Program is to discharge Participant's customers' BESS to reduce peak system load during events called by the Trust.

RIDER B

EVENTS AND PERFORMANCE PAYMENTS

EVENTS. The Trust will call events using the following criteria, which may be changed at any time at the Trust's sole discretion with 30 days written notice to the Participant.

a. The Trust will assign batteries to Dispatch Groups upon enrollment. Each Dispatch Group will have its own events.
b. There will be at least 2 events every month per Dispatch Group.
c. There will be a maximum of 60 events per year per Dispatch Group.
d. Events will be 3 hours long.
e. The Trust will decide when to call events and will notify Program Participants the day prior to the event.
f. Events may be called at any time but will typically be between 5:00 p.m. to 9:00 p.m. on weekdays.

INCENTIVE AWARD: $200 per year per average kW discharged, averaged over all peak load events in a Program Year (April 1 through March 31) for verified BESS dispatches during peak load periods in accordance with the Program terms.

PERFORMANCE PAYMENTS. The Incentive Award is calculated based on the average discharge across all events in the Program Year. If a BESS is not enrolled for a given event or opts out of the event, the performance of those customer(s) will be counted as 0 kW for that event. The aggregated average kW for Participant's portfolio of batteries must be at least 100 kW for one or more events. If this threshold is not met, no Incentive Award will be paid for the Program Year. Incentives are paid annually in June. Participant performance will be measured by interval data collected through the BESS management system, as provided by the Participant. Performance Payment calculation is at the sole discretion of the Trust.

Participant is expected to facilitate BESS discharges from its customer portfolio each year during the Project Period. If the aggregate average kW for Participant's portfolio is calculated as 0 kW for any Program Year or if Participant's portfolio does not produce at least 100 kW for any event in two consecutive Program Years, Participant shall be removed from the Program, and this Agreement shall be terminated with no further obligation on the Trust. In such a case, Participant would be able to apply for any other programs for which it may be eligible at the time.

AVERAGE DEMAND REDUCTIONS. Validated average demand reductions will be based on hourly interval data. Participant must provide this data for each Program Year within 30 days of the end of the Program Year. Validation of the average demand reductions will consist of validating battery discharge levels using interval data, and, at the Trust's discretion, AMI data. For the avoidance of doubt, Incentive Award amounts shall be calculated only for reductions in grid-supplied energy resulting from dispatches from Participant's customers' BESS during certain peak demand hours that are supported by interval data. Claimed BESS dispatches unsupported by corresponding interval data will be assumed as 0 kW event dispatches.

Time stamped BESS interval data must be submitted to the Trust's contact listed in the Agreement for the purpose of performance evaluation.

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

RIDER C

GENERAL TERMS AND CONDITIONS

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

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

3. EQUAL EMPLOYMENT OPPORTUNITY; NON-DISCRIMINATION. During the performance of this Agreement, Participant shall abide by all applicable equal employment opportunity and nondiscrimination statutes, regulations, and orders including, without limitation, the Maine Human Rights Act. To the extent applicable, the provisions of 5 MRSA §784 are incorporated herein by reference and Participant 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. Participant shall not engage any person in the employ of the Trust or any State department or agency in a position that would constitute a violation of 5 MRSA § 18-A (Conflicts of Interest in Contracts with State) or 17 MRSA § 3104 (Conflicts of Interest in State Purchases). No individual employed by the Trust or the State at the time this Agreement is executed or any time thereafter during the Project Period shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom that would constitute a violation of 5 MRSA § 18-A or 17 MRSA § 3104. Participant shall not engage on a full-time, part-time or other basis during the Project Period any other personnel who are or have been at any time during the Project Period in the employ of the Trust or any State department or agency, except regularly retired employees, without the written consent of the Executive Director of the Trust. Participant shall not engage on this Project on a full-time, part-time or other basis during the Project Period any retired employee of the Trust who has not been retired for at least one year, without the written consent of the Executive Director of the Trust.

5. NO SOLICITATION WARRANTY. Participant 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 Participant, 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 Participant for influencing, or attempting to influence, an officer or employee of any agency, a member of the State Legislature, an officer or employee of the State Legislature, or an employee of a member of the State Legislature, in connection with the awarding of any agreement, the making of any grant or award, the entering into any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any agreement, grant, award, or cooperative agreement.

7. RECORD RETENTION AND INSPECTION. Participant shall make and retain all such documents and records necessary to establish proper performance of the Project and to support all invoices and requests for payment under this Agreement. Participant shall retain all project records (including financial records, progress reports, service, equipment, and material orders, invoices, evidence of payment, and payment and reimbursement requests) for a minimum of three (3) years following the expiration or termination of this Agreement. Participant shall permit the Trust or its authorized representatives to examine such records and to interview any officer or employee of Participant or any of its contractors regarding the work performed under this Agreement. Participant 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, Participant hereby acknowledges and agrees that documents and information relating to Participant's project, the Incentive Award payments 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, Participant hereby agrees to permit disclosure of information about Participant's project and how Incentive Awards and Program funds were awarded and spent.

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

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

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

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

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

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

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

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

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

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

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

20. EFFICIENCY MAINE NAME; PUBLIC DISCLOSURE. The "Efficiency Maine" name is a registered trademark of the Trust. The Trust grants Participant a limited, revocable, non-exclusive license to use the Efficiency Maine name 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 requirements. The license to use the "Efficiency Maine" name is revocable by the Trust at any time.

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

22. INFORMATION IN SUPPORT OF THE PROGRAM. The Trust is required to report on use of and the performance of energy efficiency and conservation programs and projects. Information from these reports may be made available to the public. Participant agrees to cooperate with the Trust on such reporting and shall provide information related to the award, this Agreement, the Project, and any related agreement as requested or required by the Trust to meet its obligation to provide accurate, complete, and timely information to the public, to meet the Program reporting requirements, and/or to comply with state or federal law or regulation. Further, Participant shall make all application and related customer records available to the Trust upon request and such records shall include their name, address, phone, e-mail address, utility name, and utility account number of each customer participating in the Program.

23. MEASUREMENT AND VERIFICATION. Participant shall allow independent third-party verification of Project installation and performance under terms as may be established by the Trust. Participant shall conduct and cooperate in such auditing and reporting as may be necessary to assess performance of the Project and shall provide information as may be necessary or useful for such purposes.

24. CAPACITY RESOURCES; CREDITS; FORWARD CAPACITY REVENUE. It is understood that the Project is intended to achieve certain energy efficiencies, reductions in fuel usage, and reductions in electricity consumption

and that the Project may produce or result in certain marketable or tradable credits, benefits, and proceeds, including energy efficiency capacity resources, capacity savings, avoided energy, renewable energy credits, and forward capacity market credits, payments, or revenues (collectively, the "Capacity Resources, Credits and Revenues"). In consideration of the Incentive Award, and unless otherwise expressly agreed in writing by the Trust, the value of all such Capacity Resources, Credits and Revenues produced or resulting from discharges from the BESS utilized under this Agreement for the Project during the Project Period shall be deemed owned by the Trust and the Trust shall have the sole right to bid, trade, transfer, sell, assign, use, and apply all such Capacity Resources, Credits and Revenues for the benefit of the Trust and the programs administered by the Trust under the Efficiency Maine Trust Act. Participant hereby transfers and assigns to the Trust all of Participant's right, title, and interest in such Capacity Resources, Credits and Revenues.

25. CONFIDENTIAL INFORMATION. Participant shall take reasonable and necessary steps to protect confidential information of its participating customers. To the extent that Participant has access to, receives, transmits, utilizes, or holds information of any customer of the Trust, Participant acknowledges that energy usage profile information and other utility data of an identifiable public utility customer participating in an Efficiency Maine program, including name, address, email address, and telephone number, is confidential under the terms of the Efficiency Maine Trust Act, 35-A MRSA §10106, and may not be used or disclosed by the Participant except as necessary in connection with the performance of the Program.

26. USE AND PUBLICATION OF DATA AND INFORMATION. All deliverables, data, works, and materials created, generated, or produced by Participant for or on behalf of the Trust under this Agreement (collectively, "Works") are for the benefit of the Trust and for its sole use. Participant may not publish, share, or publicly present any Works or other materials derived from the Works without the prior express written approval of the Trust in each instance, which approval may be granted or denied in the Trust's sole discretion. Any approved publication or presentation of the Works must be in accordance with the Trust's Use and Publication Guidelines, including any acknowledgements, attributions, disclaimers, and other requirements as the Trust may specify.

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

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