

**EFFICIENCY MAINE TRUST  
SMALL BATTERY MANAGEMENT INITIATIVE**

**TERMS AND CONDITIONS**

These Terms and Conditions for the Small Battery Management Initiative (the "Program"), along with the Participant's enrollment application ("Application") and the terms of the Efficiency Maine Small Battery Management Initiative Program description document (the "Program Manual") in place at the time of Participant's enrollment constitute the agreement ("Agreement") between Efficiency Maine Trust (the "Trust") and the participant enrolling their small battery in the Program (the "Participant"). Participant understands that acceptance of these Terms and Conditions and the incorporated Program Manual is a condition to Program participation and the receipt of any Program benefits. Capitalized terms used herein and not otherwise defined shall have the same meanings as ascribed to such terms in the Program Manual.

**1. ENROLLMENT; TERM.**

1.1 Participant acknowledges and agrees to the terms of the Program Manual, confirms enrollment of their battery storage system (the "Equipment") in the Program, and represents and warrants that Participant meets, and will continue to meet, the Program eligibility requirements throughout the term of this Agreement.

1.2 The Trust or its authorized service providers will manage enrolled batteries using a distributed energy resource management system (DERMS) platform. Through this platform, the Trust and its authorized service providers will have direct insight into the actual battery performance of the Participant's enrolled system. The Trust reserves the right to increase or reduce the enrolled system capacity based on the Equipment's actual performance to reflect its true capability more accurately.

1.3 Subject to the enrollment deadlines as set forth in the Program Manual, this Agreement shall commence upon the Trust's acceptance of Participant's enrollment in the Program and shall continue for a period of one (1) year. Unless earlier terminated in accordance with the terms of this Agreement, this Agreement and the Participant's enrollment in the Program shall automatically renew annually unless either party gives notice of non-renewal at least 7 days prior to the end of the current one-year term. The initial term and each successive renewal term constitute the "Term." Notwithstanding anything to the contrary herein or in any other Program document, the Trust may modify or terminate the Program at any time in its sole discretion. A Participant has no vested rights in any incentive or ongoing Program participation.

**2. ACCESS TO AND CONTROL OF EQUIPMENT; DATA ACCESS**

2.1 Participant acknowledges that the Trust, through its authorized service providers, will control the Equipment as necessary for Program purposes during Peak Events and expressly agrees that the Trust and its authorized service providers may access the Participant's Equipment for Program purposes, including load management, energy usage monitoring, energy capacity discharge, and Equipment performance monitoring. A "Peak Event" is defined as a period in which the Trust will make necessary changes to Equipment performance to relieve stress on the grid when it is forecast to be at its peak. Such dispatch events are called to coincide with the ISO-NE (Independent Service Operator of New England) system peak hour, sometimes referred to as the installed capacity, or ICAP, hour. Approximately forty (40) Peak Events will be called over the course of the Summer Capacity Season (June 1 – September 30) to mitigate the highest 10% of energy consumption. Peak Events will last up to three (3) hours and will take place between the hours of 1:00pm and 8:00pm EDT. Participant will receive notice of a scheduled Peak Event, via electronic method, as least four (4) hours in advance. Participant may opt-out of a Peak Event by providing prompt notice to the Trust, in which case Participant's Equipment curtailment performance for that event shall be set at zero.

2.2 Participant expressly authorizes and consents to access and use by the Trust and its authorized service providers of certain data and information regarding the Participant and the Equipment, including IP address, Equipment information, energy usage and consumption data, as well as personally identifiable information, such as name, address, and Participant contact information. This information will be used by the Trust and its authorized service providers in connection with Program implementation, design, reporting, monitoring, and controlling Equipment, as well as other uses consistent with the Trusts' policies, and as provided in applicable third-party vendor terms and conditions. Participant information used by the Trust shall be subject to the confidentiality provisions of the Efficiency Maine Trust Act, 35-A M.R.S. §10106.

2.3 Participant acknowledges that Equipment access, control, and monitoring may be subject to the terms and conditions expressed in third-party equipment monitoring platform(s) and web-based management services that the Trust and its authorized service providers utilize to enable the access to and control of Equipment, to view performance data, and otherwise enable required third-party resources and applications as necessary for implementation of the Program. Participant acknowledges that these third-party terms and conditions may be amended or revised from time to time and shall be posted and maintained on the Trust's website at [efficiencymaine.com](http://efficiencymaine.com). Participant expressly authorizes the Trust and its authorized service providers to use any interface necessary to facilitate programming and communication with Equipment, to access data generated by the Equipment, and to issue commands for the operational control and management of the Equipment consistent with the Program, including without limitation charging and/or dispatching energy and storage resources. Participant shall not interfere with, disable, or terminate any software, interface, connection,

or application necessary for Program implementation and Equipment access and control as authorized herein during the Term of this Agreement.

2.4 Participant acknowledges that the operation, charge, and discharge of the Equipment will be controlled remotely as necessary during Peak Events, and that only the energy in the Equipment at the time of a grid outage will be available for backup power services. Participant acknowledges and understands that if the Equipment requires that it be recharged only by solar power for any reason, whether for operational, financial, or other reasons, this may impact or delay the Equipment's return to a fully charged status and may impact or delay the availability of capacity for Program commitments or back up power. Other Equipment benefits and services, such as self-consumption, load shifting for utility bill management, and other potential future services and benefits may not be available during the Summer Capacity Season.

2.5 System outages, equipment failure, or other circumstances outside of the Trust's control may impact or delay the charging status and availability of Equipment. The Trust cannot guarantee that the Equipment will be charged, fully charged, or available to Participant during all system outages; however, the initiative is designed so that the Trust will minimize use of the Equipment during or prior to a weather event that is expected to cause system outages.

2.6 BECAUSE THE BATTERY EQUIPMENT CAN BE DEPLETED AT ANY TIME, PARTICIPANT SHOULD NOT RELY EXCLUSIVELY ON THE BATTERY EQUIPMENT TO POWER LIFE-SUPPORTING EQUIPMENT.

### **3. RESPONSIBILITY FOR EQUIPMENT OPERATION, CONNECTIVITY AND INTERNET ACCESS**

3.1 Participant is solely responsible to maintain Equipment operation and internet connectivity throughout the Term. Participant represents and warrants that it has and will maintain throughout the Term of this Agreement: (i) a working and reliable high-speed internet point of access at the Participant's premises that is connected and enabled to communicate with the Equipment; (ii) an active user account for the Equipment (where required); and (iii) all other system components that may be required by the Equipment manufacturer or installer and any other equipment and software (*i.e.* smart phone apps) necessary for the reliable operation of the Equipment.

3.2 Participant is solely responsible to ensure that Participant has all required system elements (hardware and software) for reliable operation of the Equipment and that such elements are compatible with and properly configured to allow access and communication as may be required for the Program. Participant shall download and install any third-party software and applications necessary for access to and operation of the Equipment in accordance with the Program terms. Participant is solely responsible for all fees charged by Participant's Internet Service Provider (ISP) and Participant is solely responsible for compliance with all applicable agreements, terms of use/service, and other policies of the Equipment manufacturer, the Equipment installer/vendor, software providers, and Participant's ISP.

3.3 Participant is solely responsible for the maintenance, repair, and replacement of the Equipment during the Term.

### **4. EQUIPMENT PERFORMANCE; DISRUPTION**

4.1 If the equipment fails to perform within +/- 10% of the enrolled capacity or to perform in self-consumption mode as required, Participant will be notified that they have fourteen (14) days to resolve the issue and have the Trust test and verify that performance has been restored. If the Equipment is not performing in accordance with its enrolled capacity after 14 days, the Trust reserves the right to alter the enrolled capacity to reflect more accurately what can be provided by the Participant's Equipment. Notice of this change will be provided to the Participant. If the Trust and Participant are unable to restore performance, the Trust reserves the right to remove Participant's incentive eligibility for that year's enrollment. This does not preclude Participant from re-enrolling in successive years as may be allowed by the Program rules.

4.2 In the event that the Equipment fails to operate, or the Trust is unable to communicate with the Equipment, and operation and access is not restored as necessary within seven (7) days after the third email notice, Participant will forfeit their incentive eligibility for that year's enrollment. This does not preclude Participant from re-enrolling in successive years as may be allowed by the Program rules.

### **5. PROGRAM INCENTIVE PAYMENTS**

5.1 Subject to Program terms, Participant will be eligible to receive an annual Program incentive payment based on the Equipment's curtailment performance over a Summer Capacity Season.

5.2 Incentives for the Program are offered on a pay-for-performance basis and will be earned and paid as set forth in the Program Manual. If a battery system is not properly maintained, the internet connection to the battery system is interrupted, or there is any other circumstance that would cause the battery to be unable to properly receive remote communications or report performance, the incentive amount may be affected.

## **6. NO ASSIGNMENT OR TRANSFER OF ENROLLMENT; SALE OF PROPERTY**

6.1 Participant may not transfer or assign its Program enrollment to another person or entity. The sale or transfer of the Equipment to a third party will cause an automatic termination of this Agreement and a forfeiture of incentive eligibility.

6.2 Participant acknowledges that they are required to own the premises where the Equipment is installed and Participant hereby represents that they own the premises where the Equipment is installed. Participant agrees to provide the Trust with 30-day advance notice of a sale of the premises where the Equipment is installed. In the event of a sale, the Participant's enrollment shall terminate. If the new owner wishes to participate in the Program and enroll a battery resource located at the premises, such person must submit a new enrollment application subject to the Program terms and incentive rates offered at the time.

## **7. TERMINATION**

7.1 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 failure to use, maintain, or make available the Equipment as required by the Agreement for the time periods required by this Agreement; (iv) Participant's failure to provide any required information or reporting as required under the Program; (v) Participant'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.

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

7.3 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, if the Program is modified or discontinued, or in the event that Program funds are de-appropriated, re-allocated or restricted by any governmental authority or court of competent jurisdiction, the Trust's authorization to operate or administer the Agreement or the Program is withdrawn or curtailed, there is a material change in Program or market conditions, or there is a material change in legislation affecting the Trust's authority or operations.

7.4 The Trust reserves all rights and remedies available at law or in equity in the event of a breach of this Agreement by Participant.

## **8. LIMITATION OF LIABILITY**

8.1 The Trust is a quasi-state agency and a governmental entity that is entitled to certain limitations and immunities from 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.), any state or federal statute, the common law, or any other privileges or immunities of the Trust as may be provided by law.

8.2 Except in cases of gross negligence or intentional misconduct, and without waiving any immunities or limitations of liability available to the Trust, in no event shall the Trust or its agents or contractors be liable for any damage to or malfunction of Participant's Equipment or any connected components arising or resulting from participation in the Program or any remote discharge or curtailment activity. IN NO EVENT SHALL THE TRUST BE LIABLE OR RESPONSIBLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING FROM OR RELATED TO THE PERFORMANCE OF THIS AGREEMENT, ALL OF WHICH ARE EXPRESSLY WAIVED AND DISCLAIMED.

## **9. MISCELLANEOUS**

9.1 Utility Data. Participant hereby grants the Trust and its authorized agents access to Participant's utility data and other electricity usage information for Program-related purposes. Participant utility data and electricity usage information shall be subject to the confidentiality provisions of the Efficiency Maine Trust Act, 35-A M.R.S. §10106.

9.2 Capacity Resources; Credits; Forward Capacity Revenue. The Program 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 Trust's payment of incentive amounts to or for the benefit of Participant, the value of all such Capacity Resources, Credits and Revenues produced or resulting from the Equipment during Peak Events 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.

9.3 Taxes. The value of the incentive payments may be taxable to Participant. Participant shall be solely responsible for the determination and payment when due of all taxes that may be due in connection with any payments made under this Agreement.

9.4 Governing Law; Entire Agreement. This Agreement shall be governed in all respects by the laws of the State of Maine. Any legal proceeding regarding this Agreement shall be brought in State of Maine administrative or judicial forums. These Terms and Conditions, the Application, and the Program Manual constitute an integrated Agreement and contain the entire Agreement of the parties as to its subject matter and supersedes any prior discussions, understandings, and agreements, whether oral or in writing regarding the subject matter of this Agreement. 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.