

THIRD-PARTY OWNERSHIP GUIDE

(TERMS AND CONDITIONS FOR SOLAR ELECTRIC INCENTIVES USING FORM 220T)

1.0 INTRODUCTION

Welcome! Energy Trust is excited to introduce the availability of its standardized commercial and non-profit/government incentive offerings in cases where third-party entities are working with eligible host sites to install and operate solar electric projects. This **Third-Party Ownership Guide (Guide)** and the **Form 220T** should be used when the entity that will own the solar electric system is NOT the exact same business entity that owns the commercial, non-profit or government host property where the system will be installed.

If you are not utilizing a third-party ownership structure, then this **Guide** is not applicable and you should complete and submit a **Form 220C** to apply for Energy Trust incentives for your system. In addition, if you are planning to aggregate multiple solar electric systems located at more than one site, then you are not eligible to submit this application and you will need to contact Energy Trust to negotiate a project funding agreement.

Please note that in order to qualify for Energy Trust incentives, all program eligibility criteria must be satisfied. If you are unsure about which forms should be submitted or have any other questions regarding our program criteria or requirements, please contact Energy Trust's Commercial Solar Program Manager at (503) 445-7640 before submitting your application.

If you submit a signed **Form 220T** and Energy Trust accepts the submission, the submission will constitute an agreement between you and Energy Trust subject to the terms of this **Guide**. Below, the term "Agreement" is used in this sense.

2.0 APPLICATION

2.1 Incentive Agreement

Host and System Owner (as defined in **Section 3.1** below) must both be eligible to participate and must both sign the submitted **Form 220T: Incentive Agreement** application, which incorporates the terms and conditions set forth in this **Guide**. The **Form 220T** application will be submitted as an offer by System Owner and Host and shall constitute a binding legal agreement IF AND ONLY IF Energy Trust approves it, via an e-mailed **Incentive Reservation** letter.

System Owner and Host are each advised to retain a copy of the application and any accompanying or related documentation submitted to Energy Trust. Energy Trust will not be responsible for any lost documentation related to the application.

I

System Owner Initial _____

Host Initial _____

2.2 Term

The term of this Agreement shall be from the date the application is approved by Energy Trust, as set forth in the **Incentive Reservation** letter, and shall remain in full force and effect for a period of twenty (20) years from the date that the System receives inspection approval from Energy Trust. For the purposes of the Agreement, Energy Trust will use the Energy Trust's inspection approval date as the System's Commercial Operation Date.

2.3 Additional Information

Energy Trust may request additional information and/or documentation from System Owner and/or Host at the time of incentive application and prior to Energy Trust's approval of the application or at any other time during the term. System Owner and Host agree to provide such requested information or documentation. Such additional information required by Energy Trust may include, but is not limited to, items such as: (i) additional proof of a Host's tax status; (ii) additional details of any third-party financing arrangement between Host and System Owner, including receiving copies of any and all relevant contracts such as any lease agreement(s) and/or output agreement(s); (iii) additional project financial documentation; (iv) a copy of the project's submitted BETC application; (v) proof of required insurances; (vii) documentation substantiating System Owner's ownership of the System, etc.

2.4 Treatment of Information

Host and System Owner must clearly identify any submitted sensitive financial or proprietary information which it wishes Energy Trust to keep confidential as "Confidential Information". System Owner and Host agree that the following information will not be considered confidential and Energy Trust may include the following information in reports or other documentation submitted to the Energy Trust Board of Directors, the Oregon Public Utility Commission, the Oregon Department of Energy, Oregon Housing and Community Services, or the Oregon Legislature: (i) their respective names; (ii) a description of the System and its general location; (iii) a description of the Energy Trust services provided; (iv) the amount of any Energy Trust incentives reserved or paid; and (v) the amount of the System's energy generation and/or any resulting energy savings.

3.0 ELIGIBILITY

3.1 Host

A. Definition: A Host, which includes Host's successors-in-interest and legal assigns, must be the non-residential utility customer of record at the location where the qualifying solar photovoltaic generating equipment as described in the **Form 220T** or any system that is repaired, replaced or relocated consistent with the terms of this Agreement (the System) will be physically located (the Site) and be the recipient of the electricity generated by the System. Host must be either the sole owner of the real property at the Site address, or, if the property is owned by a third party or parties, Host's application must include an executed **Form 220T: Owner/Lessor Confirmation Addendum** evidencing Host's right to install and operate

the System at the Site for the term of this Agreement The Site must be within the Oregon electric service territory of either Portland General Electric (PGE) or Pacific Power. Final determination of Host's eligibility rests solely with Energy Trust.

B. Nonprofit/Government Eligibility: In order to participate in the non-profit/government incentive offering, the Host must be a qualifying: (i) government body (federal, tribal, state, local, special), or (ii) non-profit 501(c)(3) corporation. Final determination of Host's eligibility rests solely with Energy Trust.

C. Host Representations and Warranties: In addition to any other representations and warranties contained within this Agreement, by submitting a **Form 220T** application to Energy Trust, Host represents and warrants that:

(i) It has given written consent to System Owner to install, operate and maintain the System at the Site for the duration of the term of this Agreement, and it has determined that there are no recorded easements, covenants, conditions or restrictions that would materially impair or prevent the installation, operation, maintenance or removal of the System:

(ii) The execution, delivery and performance of this Agreement is within its powers, has been duly authorized by all necessary action and does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

(iii) It has all authorizations necessary for it to legally perform its obligations under this Agreement;

(iv) This Agreement, and any other document executed and delivered in accordance with the agreement, constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses;

(v) It has sufficient financial stability to perform its legal obligations under this Agreement; and

(vi) There is not pending, or to its knowledge, threatened against it, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement.

3.2 System Owner

A. Definition: The System Owner, which includes System Owner's successors-in-interest and permitted assigns, must either (i) have sole ownership rights to the System that will be installed at an eligible Host's Site; or have leasehold rights to site, operate and maintain the System for the term of this Agreement; or (ii) if other parties have legal rights to, security interests in, or other liens or encumbrances against the System or any of its equipment, System Owner represents and warrants to Energy Trust that it has listed any and all such parties on its submitted **Form 220T**. No other party may have any legal rights to, security interests in, or other liens or encumbrances against the Environmental Attributes during the term of the Energy Trust Environmental Attribute Ownership Period. Final determination of System Owner's eligibility rests solely with Energy Trust. The System Owner is responsible for purchasing, installing, owning, operating and maintaining the System for the duration of the term.

B. System Owner Representations and Warranties:

In addition to any other representations and warranties contained in this Agreement, by submitting a **Form 220T** application to Energy Trust, System Owner represents and warrants that:

- (i) It has received written consent from Host to install, operate and maintain the System at the Site for the duration of the term;
- (ii) The execution, delivery and performance of this Agreement is within its powers, has been duly authorized by all necessary action and does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iii) It has all authorizations necessary for it to legally perform its obligations under this Agreement;
- (iv) This Agreement, and any other document executed and delivered in accordance with the Agreement, constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses;
- (v) It has sufficient financial stability to perform its legal obligations under this Agreement;
- (vi) There is not pending, or to its knowledge, threatened against it, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement; and
- (vii) No entity other than Energy Trust has been, or will be, granted any legal rights to, security interests in, or other liens or encumbrances against the Environmental Attributes during the Energy Trust Environmental Attribute Ownership Period.

3.3 Trade Ally Contractor

In order to be eligible to receive an Energy Trust incentive, the System must be installed by an Energy Trust Solar Electric Program Trade Ally Contractor in accordance with Energy Trust's standard Solar Electric Program requirements as detailed in the Energy Trust's **Solar Electric Program Guide** and **Solar Electric System Requirements**. Both of the aforementioned documents and a list of Energy Trust Solar Electric Program Trade Ally Contractors are available on Energy Trust's website at <http://www.energytrust.org/RR/PV/choose.html>. As with all contractors, it is wise to follow the consumer tips and best practices for hiring a contractor located on Oregon's Construction Contractor's Board website (www.hirelicensedcontractor.com/). System Owner is solely responsible for ensuring that the System is installed by its selected Trade Ally Contractor in accordance with Energy Trust's requirements so that it will pass Energy Trust's inspection and qualify for Energy Trust incentives.

4.0 ENERGY TRUST INCENTIVES

4.1 Incentives Availability and Amounts

Energy Trust's solar electric program requirements and incentive levels are subject to change and may vary by utility service area, depending on the pace of solar demand in each utility territory and the available incentive budget. Energy Trust will calculate the estimated incentive

amount that System Owner will be eligible to receive for the System based upon Energy Trust's program requirements and applicable incentive offerings and the information provided by Host and System Owner in the submitted **Form 220T**.

If Host and System Owner are applying to receive Energy Trust incentive funds for the System during the same calendar year that Host has received (or is expected to receive) Energy Trust incentive funding for any solar electric installation(s) other than the System, then the estimated incentive amount that System Owner will be eligible to receive for the System may be reduced.

Contact Energy Trust's Commercial Solar Program Manager directly at (503) 445-7640 if you have any questions about Energy Trust's program requirements or incentive offerings currently in effect.

4.2 Incentive Reservation

Funding for Energy Trust incentives is limited and available subject to program requirements and on a first-come first-served basis. Both System Owner and Host must sign and submit the **Form 220T** in order to request a reservation of incentives for the System. Energy Trust will reserve the estimated incentive amount approved and reserved by Energy Trust for System Owner for a period of one (1) year from the date Energy Trust notifies System Owner and Host that the application has been approved by Energy Trust via an e-mailed **Incentive Reservation** letter (the Reservation Period).

During the Reservation Period, Energy Trust may require System Owner and/or Host to provide documentation to show that the project is moving forward. Determination of appropriate progress rests solely with Energy Trust and if, at any point during the Reservation Period, Energy Trust determines that the System Owner or Host is not progressing appropriately and in good faith to complete timely installation of the measure(s), the reserved incentive funds may be withdrawn. Energy Trust generally expects that the System equipment should be ordered by no later than 60 days from application approval and any necessary agreements for the installation work should be completed by System Owner and Host by no later than 90 days following application approval.

If the System is not installed, inspected and approved during the Reservation Period, Energy Trust will cancel the incentive reservation and the incentive funds will be withdrawn, except that Energy Trust may extend the Reservation Period if the delay is due to events beyond the System Owner's control or the Energy Trust inspection process. The incentive reservation for a specific site is not transferable. After a reservation withdrawal by Energy Trust, it will be necessary to re-apply by submitting a new application and any new application would be subject to the program requirements, including incentive funds availability and rates, in effect at the time of re-submittal.

4.3 System Design Changes During Reservation Period

If the System design changes in any material respect (i.e., a change to an inverter or PV module) at any point from that submitted in the approved **Form 220T** during the incentive Reservation time Period, System Owner and Host must both sign and submit an updated **Form 220T**, as well as a new electrical schematic, sun chart (if affected), and any other additional documentation requested by Energy Trust. Energy Trust must review and determine whether any updated submission is acceptable.

4.4 Incentive Payment to System Owner

The Energy Trust incentives provided may vary from amounts listed in the **Form 220T** based upon the final System installed; provided, however, that in no case will the Energy Trust incentive exceed the estimated amount set forth in the approved **Form 220T**. Payment will be made within thirty (30) days after Energy Trust approves the installation.

Energy Trust will pay any incentive provided under this Agreement directly to System Owner, at System Owner's mailing address as identified on the **Form 220T**, unless System Owner chooses to assign the payment to Host or another party. If System Owner wishes to assign the payment to another party, then that party must either be: (i) identified at the time that the **Form 220T** is submitted and both the System Owner and its designated Payee must complete and sign "**Option to Assign Payment**" section located on the **Form 220T**; or (ii) if the assignee is unknown at the time the **Form 220T** is first filed, an updated **Form 220T** and **Option to Assign Payment** must be submitted when the designated Payee is known. An **IRS Form W9** must also be attached for the Payee, and if this option is selected than the incentive payment will be made to Payee's mailing address as identified on the **Form 220T**.

System Owner understands and agrees that regardless of whether or not System Owner assigns the incentive payment to Host or some other payee, System Owner will be the responsible party for this Agreement and System Owner remains solely responsible for performing all of System Owner's obligations hereunder, including but not limited to any repayment obligations.

5.0 SYSTEM INFORMATION

5.1 System Requirements; Inspection

The System must be a net-metered, grid-tied solar photovoltaic system, must be installed in accordance with federal, state, local and utility specifications and requirements and in accordance with Energy Trust's standard **Solar Electric System Requirements**, and must pass an Energy Trust inspection before Energy Trust will be obligated to pay any incentive. System Owner and the Host must comply with all of Energy Trust's inspection requirements and will allow Energy Trust, and its representatives, reasonable access to both the Site and the System sufficient for Energy Trust to perform the required System inspection. Energy Trust's inspection is not a code inspection, and no warranty is implied. The Energy Trust inspection is for Energy Trust's own program verification purposes and will assist Energy Trust in determining whether or not the System is eligible to receive Energy Trust incentive funding.

5.2 System Operation and Maintenance

System Owner is responsible for all contractors, all subcontractors, project financing and any and all items relating to the building, operations and maintaining the System. System Owner will install, own, operate and maintain the System in good working order during the term of this Agreement. System Owner and Host will use best efforts to maintain the solar envelope over the Site so that the System's access to sunlight remains comparable to that contained in the sun chart attached to the **Form 220T**.

If the System or any supporting structure (i.e. the roof) requires repair and such repair will cause the System to stop operating for longer than thirty (30) days, and such repair is not required as a result of a force majeure event as described in **Section 10.7**, then the System Owner and/or Host must notify Energy Trust of the date on which the System stopped operating. The System must be re-installed to full commercial operation and re-inspected by Energy Trust within 90 days of the date on which it stopped operating or System Owner will be subject to the repayment requirements set forth in **Section 5.4** below.

In the case where System Owner is not the sole owner of the System, and another party or other parties have legal rights to, security interests in, or other liens or encumbrances against the System or any of its equipment, and such other party notifies System Owner of its intent to exercise its rights to or interests in the System, System Owner must immediately notify Energy Trust and will be subject to the repayment requirements set forth in **Section 5.4** below.

If Host, at any time during the term, ceases to conduct business operations at and/or vacates or sells the Site, or is otherwise prevented from operating the System at the Site for any reason, Host must provide both System Owner and Energy Trust with at least 60 days' advance written notice prior to the date that the event will occur. Host and System Owner must provide Energy Trust with evidence satisfactory to Energy Trust that:

- (a) System Owner and Host have executed all necessary agreement(s) to keep the System in operation at the Site consistent with the terms and conditions of this Agreement for the term (see **Section 5.3** below for requirements to assign this Agreement), or
- (b) If the System Owner and Host have agreed to move the System to a substitute site, (i) the new site is located in the same electric utility district as the existing Site, and (ii) the new site has comparable or better access to sunlight compared to that shown in the sun chart in the submitted **Form 220T**, and (iii) System Owner and Host are capable of re-installing the System to full commercial operation passing an Energy Trust inspection within 90 days of the time the System ceases operation at the existing Site. Any System installation at a substitute site must meet this Agreement's requirements for the System at the original Site. If Host and/or System Owner are unable to provide Energy Trust with satisfactory evidence as described above, or if the System is moved to a new site and not re-installed as provided above, System Owner will be subject to the repayment requirements set forth in **Section 5.4** below.

5.3. Assignment of Agreement

This Agreement is specific to the parties and may not be assigned by System Owner or Host to any other party without Energy Trust's express written consent, which consent will not be unreasonably withheld. Energy Trust will consent to assignment if it is given advance written notice of intent to assignee the Agreement and the assignee agrees, to Energy Trust's satisfaction, to assume all of the assignor's rights and obligations pursuant to the Agreement.

Energy Trust may, at any time, assign its rights under this Agreement to a third party when requested to do so by the OPUC under its grant agreement with Energy Trust (Grant Agreement).

5.4 Repayment of Energy Trust Incentive Funds

Following payment of the incentive by Energy Trust to System Owner; and, when required by **Section 5.2** of this Agreement, **System Owner will immediately repay** (in the form of a

cashiers check payable to Energy Trust of Oregon, Inc.) a portion of the incentive funds amount to Energy Trust, calculated as follows:

Incentive amount paid to System Owner *multiplied by the fraction of (20 minus the number of anniversaries of the Commercial Operation Date divided by 20)*

5.5 Damages

In the event System Owner is determined to be in breach of **Section 5.4**, System Owner shall pay to Energy Trust liquidated damages in an amount equal to (a) one hundred percent (100%) of the incentive amounts provided by Energy Trust, and (b) reasonable costs, including any attorney's fees, incurred by Energy Trust in enforcing the requirement.

6.0 INSURANCE REQUIREMENTS

Because Energy Trust desires to ensure that those involved in the project have certain protections in place, and in order to minimize risk to Energy Trust (and thus the ratepayers who are providing the incentive funding for this Energy Trust program), Energy Trust requires that System Owner and Host each maintain the following minimum types and amounts of insurance during the term:

- Workers' Compensation insurance in compliance with statutory requirements; and
- Occurrence-based Commercial General Liability insurance of at least \$1,000,000 per occurrence and aggregate

In addition to the above, the System Owner must maintain All-Risk Property insurance covering the replacement value of the System.

It is System Owner and Host's responsibility to ensure that they are in compliance with the above insurance requirements. Energy Trust recognizes that some entities are self-insured and/or have blanket coverage or are covered by the State of Oregon insurance fund (and subject to its limitations). Energy Trust will accept such coverage as long as the entity meets the levels of insurance required herein or, with respect to entities covered by the State of Oregon Insurance Fund, such coverage shall be to the fullest extent provided consistent with the Oregon Tort Claims Act and Article XI, Section 7 of the Oregon Constitution. Energy Trust may request proof of any of the required insurance coverages (including evidence of self-insurance) from System Owner and/or Host at any time during the term.

7.0 ENVIRONMENTAL ATTRIBUTES

7.1 Energy Trust Ownership of the System's Environmental Attributes

Energy Trust policy, which is available for review at <http://www.energytrust.org/library/policies/index.html>, requires that Energy Trust protect for the benefit of PGE's and Pacific Power's Oregon ratepayers all or a portion of the Environmental Attributes (defined in **Section 7.2**, below) associated with any renewable energy System that

receives Energy Trust incentive funding. Environmental Attributes are property rights separate from the energy produced by a renewable resource.

In consideration of the Energy Trust funding for the System, System Owner and Host agree as follows:

Host and System Owner agree that System Owner shall possess all ownership rights of one hundred percent (100%) of the Environmental Attributes associated with the System for a two (2) year period, calculated as beginning on the date Energy Trust approves the inspected System (the Commercial Operation Date) and running for a time period ending at 11:59:59 pm (Pacific time zone) on the day before the second anniversary of the Commercial Operation Date (the System Owner Environmental Attributes Ownership Period). Host and System Owner further agree that Energy Trust shall possess all ownership rights of one hundred percent (100%) the Environmental Attributes associated with the System for an eighteen (18) year period, calculated as beginning at 12:00:00 am (Pacific time zone) on the second anniversary of the Commercial Operation Date and running for a time period ending at 11:59:59 pm (Pacific time zone) on the day before the twentieth anniversary of the Commercial Operation Date (the Energy Trust Environmental Attribute Ownership Period). Both System Owner and Host understand and agree to the Environmental Attributes ownership arrangement as set forth herein and will fully comply with such ownership arrangement in consideration of the incentives provided to System Owner for the System installed at Host's Site pursuant to this Agreement. During the Energy Trust Environmental Attribute Ownership Period, System Owner and Host will not (i) sell the System's Environmental Attributes to any other party, or (ii) assert any claim to the Environmental Attributes or assert any claim that the System possesses or is otherwise receiving or using the Environmental Attributes.

7.2 Definition of Environmental Attributes

For the purposes of this Agreement, "Environmental Attributes" means the non-energy environmental and/or social characteristics, credits, benefits, reductions, offsets, and/or allowances, howsoever entitled, attributable to the System, including without limitation Green Tags, Green Certificates, Renewable Energy Credits (RECs), Tradable Renewable Certificates (TRCs), avoided emissions of substances to air, soil, or water, such as nitrous oxide (NO_x), carbon monoxide (CO), mercury (Hg), carbon dioxide (CO₂), methane (CH₄), or other greenhouse gases (GHGs) designated by the United Nations Intergovernmental Panel on Climate Change, and any other pollutant that is now or may be in the future regulated and tradable, whether or not such legislation, regulation or trading program is ever implemented, and any related reporting rights. Environmental Attributes do not include any energy, capacity, reliability or other power attributes associated with the generation of electricity, or any liabilities associated with such generation, and do not include any tax credits which may accrue as a result of implementing the System.

7.3 Obligation to Report Environmental Attribute Generation Data

During the Energy Trust Environmental Ownership Period, System Owner will cooperate fully with Energy Trust to (i) register or otherwise perfect Energy Trust's rights in the Environmental Attributes, and (ii) report such rights. Within the 2 week time period following each anniversary of the Commercial Operation Date, the System Owner will complete and submit to

Energy Trust's Solar Program Manager's attention, a ***Certification and Attestation Form for Environmental Attributes/Non-Energy Attributes*** (in substantially the form of the attached ***Attachment I***).

8.0 SELF-DIRECTION STATUS AFFECTS INCENTIVE FUNDING

8.1 Self-Direction

Oregon law requires customers of PGE and Pacific Power to pay a three percent (3%) public purpose charge. Under its Grant Agreement with the Oregon Public Utility Commission (OPUC), Energy Trust receives and invests some of the funds generated by the public purpose charge to support energy efficiency projects and assist with the above market costs of operating and constructing new renewable resources.

Although the payment of the public purpose charge is generally mandatory, certain large electricity consumers may “self-direct” portions of their public purpose charge payments to fund Oregon Department of Energy (ODOE)-certified expenditures at their own facilities. Self-direction is optional, and over time, an entity may change its self-direct status.

If Host's Site uses 8,760,000 kWh (1 aMW) or more in electricity in a year, then Host may be eligible to "self-direct" the portion of the public purpose charge that Energy Trust receives. This means that the Energy Trust incentive will be subject to self-direction policy (***Eligibility of Self-Direct Businesses for Energy Trust Incentives***), a complete copy of which is available for review on Energy Trust website at <http://www.energytrust.org/library/policies/index.html>. The renewable energy and conservation portions of the charge are considered separately for the purposes of the Energy Trust's policy.

8.2 Host Site Eligible to Self-Direct

You cannot claim self-direction credits and receive an Energy Trust incentive for the EXACT same renewable energy project, so if Host will receive self-direction credits for the System project described in the ***Form 220T***, then System Owner is not allowed to apply for *any* Energy Trust incentive funding for it.

If Host is (i) currently self-directing the renewable energy portion of its public purpose charge on its utility bill, OR (ii) considering self-directing that charge in the next 3 or so years, then Host must agree to one of the following options and must designate whether it is selecting **OPTION 1** or **OPTION 2** as described below on the submitted ***Form 220T***:

OPTION 1: Host shall not self-direct its renewable public purpose charge associated with the System site for a minimum of 36 months from the Commercial Operation Date. If Host begins self-directing the renewable portion of its public purpose charge during the 36- month cessation period, Host shall be subject to the recoupment requirements set forth in **Section 8.3** below;

OR

OPTION 2: Host will continue to self-direct the renewable energy portion of its public purpose charge, in which case the System Owner will only be eligible to receive fifty percent (50%) of the incentive amount that it would normally be eligible to receive from Energy Trust for the System.

8.3 Recoupment of Energy Trust Incentive Funds

If Host chooses **OPTION I** in **Section 8.2** and decides to begin using self-direction credits against the renewable energy portion of the public purpose charge on Host's electric bill for the Site during the 36-month cessation period, then (i) Host must provide Energy Trust and System Owner with not less than 60 days' advance notice, and (ii) **System Owner (or, pursuant to Section 8.2, Host) will be required to pay** (in the form of a cashiers check payable to Energy Trust of Oregon, Inc.) a pro-rated amount of the incentive funding up to a maximum of 50% of the amount System Owner received. Energy Trust will use the following formula to calculate the payment obligation:

$$\text{Payment Amount} = 0.5 \times A \times B$$

A = total amount of incentives paid

B = 36 months minus the number of months elapsed since Commercial Operation Date, divided by 36

8.4 Damages

In the event Host is determined to be in breach of **Section 8.3** of this Agreement, Host shall pay to Energy Trust liquidated damages in an amount equal to (a) fifty percent (50%) of the incentive amounts provided by Energy Trust, and (b) reasonable costs, including any attorney's fees, incurred by Energy Trust in enforcing the requirement.

9.0 ACCESS AND EVALUATION

9.1 Energy Information Release.

Host authorizes Energy Trust to access the energy usage data for the System's specified electric accounts, as identified in the **Form 220T**, at the Site. Host agrees to provide other reasonable assistance to Energy Trust to obtain such information.

9.2 Access and Evaluation

Energy Trust conducts ongoing evaluations of its programs and projects to determine effectiveness. System Owner and Host will provide Energy Trust and its representatives with access to the System and to the Site in order to: (i) read or check on the operation of the meter(s); (ii) inspect and review the project during and after completion; and/or (iii) evaluate the

operation of the System. In addition, Energy Trust may contact System Owner or Host from time to time via a telephone call, mail or e-mail to request meter information directly from System Owner or Host and System Owner and Host agree to provide Energy Trust meter information to Energy Trust. Energy Trust reports information gathered during program and project evaluations in the aggregate.

10.0 MISCELLANEOUS

10.1 Severability. If any provision of this Agreement or the application of any such provision to a party or circumstances shall be determined by any court of competent jurisdiction to be invalid, illegal or unenforceable to any extent, the remainder of this Agreement shall remain in full force and effect, unless such construction would be unreasonable.

10.2 Termination; Survival. Upon 60 days' written notice, Energy Trust may terminate this Agreement in the event that the Grant Agreement with the OPUC is terminated. Unless stated otherwise in this Agreement, regardless of whether or not the application is approved, the terms and conditions shall survive the completion of any incentive payments provided hereunder.

10.3 Headings; Counterparts; Non-Waiver. The headings in this Agreement are for reference only and shall not affect the meaning, construction or interpretation of this Agreement. This Agreement may be executed in one or more counterparts, all of which taken together will constitute one and the same agreement. The failure or refusal of a party to enjoin any breach or violation of any provision of this Agreement will not be a waiver of, consent to, or excuse for any other, different or subsequent breach or violation of the same or any other provision.

10.4 Integration and Amendment. This Agreement supersedes all other agreements between the parties and contains their entire understanding as to its subject matter. No amendment to this Agreement will be effective unless it is in writing and duly executed by authorized representatives of the parties. This Agreement will not be varied, supplemented, qualified or interpreted by any prior course of dealing between the parties or by any usage of trade.

10.5 No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and legal benefit of the parties, and no other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Agreement.

10.6 Disclaimer of Warranties. System Owner and Host hereby acknowledge and agree that Energy Trust has not made any representations and has specifically **DISCLAIMED** any and all warranties, express or implied, with respect to the System to be installed or the Trade Ally Contractor, including but not limited to Trade Ally Contractor's experience, qualification, or background, the amount of any energy savings or energy generation, if any, to be realized by Host or System Owner from use of the System, the quality of specific materials, components, or workmanship utilized in the installation, or the nature of or whether building permit(s) or governmental approval(s) may be required.

10.7 Force Majeure. Neither party will be deemed liable or to be in default for any delay or failure in performance under this Agreement deemed to result from acts of God, acts of civil and military authority, acts of public enemy, war, or any like cause beyond the parties' reasonable control; provided that the party claiming such relief shall immediately (i) notify the other party in writing of the force majeure event, (ii) exercise all reasonable efforts necessary to minimize delay caused by the such an event, (iii) notify the other party in writing of the cessation or termination of such an event, and (iv) resume performance of its obligations hereunder as soon as practicable thereafter. If a force majeure event that has damaged or destroyed or otherwise affected the System's operation for a period of 120 days in the aggregate, then System Owner shall either (i) replace the System with an identical system and bring such replacement system to full commercial operation within the time frames set forth herein, or (ii) pay Energy Trust an amount determined by the formula in **Section 5.4**

10.8 Arbitration. Any disputes which may arise under this Agreement and which can not be resolved by the Parties through good faith negotiation will be, in order to ensure rapid and economical resolution, submitted to final and binding arbitration in Portland, Oregon before Arbitration Service of Portland, Inc. ("ASP") according to its rules, provided, however, that (i) any dispute where the amount in controversy is less than \$50,000 will be resolved before a single arbitrator, and (ii) the parties remain free to agree in connection with any particular dispute that they may arrange for arbitration outside of ASP. Any arbitration award will be treated as confidential information. This commitment to binding arbitration does not apply to State of Oregon agencies represented by the Oregon Department of Justice.

10.9 Governing Law; Attorney's Fees and Costs. The Agreement shall be exclusively governed by and construed in accordance with the laws of the state of Oregon, without regard to any conflicts of laws rules thereof. In the event that any party initiates proceedings to enforce this Agreement or enjoin its breach, the prevailing party will be awarded its or their reasonable attorney fees and costs at arbitration, if any, trial and on any appeal as set by the trier of fact, including any bankruptcy proceedings.

10.10 Hazardous Materials. Energy Trust and its representatives shall have no responsibility for the discovery, presence, handling, removal, or disposal of or exposure of persons to hazardous materials of any kind in connection with Host's facility, including without limitation asbestos, asbestos products, PCBs, or other toxic substances.

10.11 Limitation of Liability; Indemnification. System Owner and Host agree that Energy Trust's liability to System Owner and Host in connection with this Agreement is limited to recovery of amounts due for the incentive payment described and under no circumstances will Energy Trust be liable for any further amount whatsoever. While Energy Trust may provide incentive funding to System Owner pursuant to this Agreement, Energy Trust is not supervising the installation or performance of the System, nor is Energy Trust responsible in any way for the completion of that work. In no event will Energy Trust be liable pursuant to this Agreement, to System Owner or to Host or to any third party for any damages, whether characterized as general, special, direct, indirect, punitive, consequential, or otherwise, and System Owner and Host hereby each specifically indemnifies, to the extent allowed by law, Energy Trust there from. As applied to any State of Oregon agency, this indemnification obligation applies to the extent permitted by the Oregon Tort Claims Act, ORS 30.260 through 30.300 and Article XI, Section 7 of the Oregon Constitution.

10.12 Tax Liability. Energy Trust is not responsible for any tax liability which may be imposed as a result of payment of any incentives. Energy Trust is not providing tax advice, and any communication by Energy Trust is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

10.13 Relationship of the Parties. Nothing in this Agreement is intended to, nor shall be construed as creating a joint venture, partnership or similar arrangement between Energy Trust, System Owner or Host, and no party shall be deemed, or hold itself out to be the agent of any other party.

11.0 QUESTIONS

It is extremely important that you have a thorough understanding of the process and ALL of the Agreement documents, so please contact us immediately if you have any questions about anything in the **Form 220T** or this **Guide**. Please e-mail inquiries and comments to Energy Trust's Commercial Solar Program Manager at: asksolar@energytrust.org.

Attachment 1: Certification and Attestation Form for Environmental Attributes/Non-Energy Attributes



**Form 215
 Certification and Attestation Form for
 Environmental Attributes/Non-Energy Attributes
 Renewable Energy Program**

To be filled out by Participants

This certification and attestation is a part of the reporting requirements that you agreed to when you executed an agreement with the Energy Trust of Oregon, Inc. to receive incentive funding for your renewable energy generating system (the Agreement). In order for Energy Trust to record how many Environmental Attributes (also referred to in some Agreements as Non-Energy Attributes) were generated by your System, you must complete and return this form to Energy Trust in accordance with the schedule required by your Agreement with Energy Trust. Capitalized terms used herein are defined terms that have the specific meaning assigned to them in the Agreement.

Please complete and return this form to the attention of Energy Trust's Renewable Energy Program Coordinator. If you have any questions, please contact us at (503) 459-4075.

Participant Information

Site Owner/ Host Name			
System Owner Name: (if different than Site Owner name above):			
Site Address (System location)	City	State	Zip
Contact Person:	Title:		
Telephone <input type="checkbox"/> office <input type="checkbox"/> cellular	Email Address:		

System Information: (check one)

Type of Renewable Energy System: <input type="checkbox"/> Solar Electric <input type="checkbox"/> Wind <input type="checkbox"/> Hydro <input type="checkbox"/> Geothermal <input type="checkbox"/> Biomass	
If Biomass, list fuel type (i.d. wood waste, landfill, etc.)	Nameplate Capacity:
System Commercial Operation Date (per the Agreement):	

Current System Meter Reading	Date
Last System Meter Reading	Date
Difference: (Please insert this number in the appropriate blanks below. Energy Trust may request additional documentation to verify reported generation information.)	

I

System Owner Initial _____

Host Initial _____

Declaration

I hereby declare that the meter readings set forth herein are true and accurate and therefore indicate that **(indicate quantity)** kilowatt hours of Environmental Attributes/Non-Energy Attributes were produced by the System from **(date)** to **(date)**. This amount of Environmental Attributes/Non-Energy Attributes represents all of the Environmental Attributes/Non-Energy Attributes produced by the System during this period.

I further declare that all of the Environmental Attributes/Non-Energy Attributes that are the subject of this attestation:

- (1) were transferred exclusively to Energy Trust pursuant to the aforementioned Agreement;
- (2) were not sold, marketed, or otherwise claimed by a third party;
- (3) were transferred once and only once to Energy Trust; and
- (4) the electricity that was generated with the Environmental Attributes/Non-Energy Attributes was not separately sold, marketed or otherwise separately represented as renewable energy and was not used to meet any federal, state or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or other renewable energy mandate.

By my signature below, I hereby certify that I am properly authorized to sign this form and attest that the information provided on this form is true and correct to the best of my knowledge and belief.

Printed Name	Title
Signature	Date