

# Residential Multifamily Housing Program

## Attachment A: Customer Access Consent Agreement

**In consideration of and to facilitate the development of a potential Project, Customer hereby agrees to and grants the following access rights (this “Access Agreement”): Customer authorizes PSE&G directly or through its subcontractor(s) to enter the Facility to conduct the Audit subject to the terms and conditions set forth in this Access Agreement.**

1. Customer grants PSE&G and its subcontractor(s) reasonable access to the Facility in conjunction with this Program at such date and time as the parties shall mutually agree.
2. PSE&G shall consider all information furnished by Customer to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than in connection with the Program, without Customer's prior written consent. Customer shall consider all information furnished by PSE&G to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than in connection with the Program, without PSE&G's prior written consent; provided, however, either Party may disclose such information as may be required to be disclosed by law or court order from a court of competent jurisdiction, and provided further that, unless otherwise prohibited by law, the Party whose information is required to be disclosed is given reasonable time to take legal action to quash such action and seek other protection. Customer expressly understands and agrees that PSE&G is required to report to New Jersey regulators on a periodic basis all Program data, including customer-specific information (“Regulatory Reporting”) as well as to prepare and submit to New Jersey regulators a Program evaluation report (the “Program Evaluation Report”). Customer expressly further understands and agrees that both the Regulatory Reporting and the Program Evaluation Report may, among other participant and Project information, identify the Program participants by name and Project address, identify the ECMs implemented by each Program participant and the energy and cost savings estimates for each Project.
3. Customer understands and agrees that for purposes of preliminary and ongoing energy analysis and benchmarking its facility data and energy consumption history may be entered into the Energy Star Portfolio Manager Database or other databases for analysis. Customer may have access to the information once the data is entered
4. Customer agrees to indemnify, defend, and hold harmless PSE&G, its officers, directors, employees and subcontractors (each an “Indemnified Person”) from and against any claim, dispute, complaint, suit, demand, judgment, liability, loss, injury, accident, fine, expense, penalty, damage, action, fee, cost, or charge of any kind or nature (including reasonable attorney fees) that may be imposed on, incurred by, or asserted against such Indemnified Person in any way relating to, arising out of or resulting from this Access Agreement except to the extent of gross negligence or intentional misconduct by the Indemnified Person.
5. Customer represents, covenants and agrees that (i) it is the owner and/or Facility manager of the Facility and that it possesses all requisite power and authority to enter into and perform this Access Agreement and to carry out the transactions contemplated herein; (ii) the execution, delivery, and performance of this Access Agreement have been duly authorized by, or are in accordance with, its organizational documents; (iii) this Access Agreement has been duly executed and delivered; (iv) this Access Agreement constitutes the legal, valid, binding, and enforceable agreement of Customer; and (v) the performance

of this Access Agreement will not contravene any organizational documents, agreement, mortgage, security agreement or the terms of any financing and will not require the consent of any third party.

6. Customer has obtained, to the extent it has deemed necessary or prudent, legal counsel to advise it on this Access Agreement. Customer agrees that this Access Agreement constitutes the full and complete agreement between the parties and supersedes any previous representations or agreements, and this Access Agreement shall not be amended except in writing signed by duly authorized representatives of both parties.
7. THIS ACCESS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW JERSEY. ANY DISPUTE ARISING UNDER THIS ACCESS AGREEMENT SHALL BE LITIGATED IN A FEDERAL OR STATE COURT LOCATED IN THE STATE OF NEW JERSEY. TO THE MAXIMUM EXTENT PERMITTED BY LAW CUSTOMER WAIVES THE RIGHT TO A TRIAL BY JURY.
8. In the event any provision of this Access Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, the remaining provisions of this Access Agreement shall remain in full force and effect to the maximum extent possible.
9. This Access Agreement is neither intended to create, nor shall it be construed as creating, a joint venture, partnership or other form of association between the parties, or an agreement to enter into any business relationship.
10. PSE&G's total liability to Customer for all actions, claims, or suits of any kind, whether based upon warranty, contract, tort (including negligence and strict liability) or otherwise, for any losses, damages, costs or expenses of any kind whatsoever arising out of, resulting from, or related to the performance or breach of this Access Agreement shall, under no circumstances, exceed the cost of the Audit if one is performed. PSE&G shall not, under any circumstances, be liable for any special, indirect, incidental, punitive or consequential losses, damages, costs, or expenses whatsoever (including for lost profits, time or revenue) for anything arising out of the performance or nonperformance of this Access Agreement, whether claims for said losses or damages are premised on warranty, negligence, strict liability, contract or otherwise. Any action against PSE&G arising out of, resulting from, or related to the performance or breach of this Access Agreement shall be filed no later than one (1) year after the cause of action has occurred. The provisions of this paragraph 10 shall survive termination or expiration of this Access Agreement.
11. This Access Agreement may not be assigned or delegated in whole or in part by Customer without the written consent PSE&G.
12. PSE&G shall have the right to issue written clarifications should it deem necessary. Under no circumstances shall PSE&G be liable for any oral clarifications, instructions, or interpretations. All determinations, decisions, instructions, judgments, interpretations, or clarifications of the PSE&G regarding the Program or the Program rules shall be final, binding, and conclusive unless determined to have been made in bad faith.