



**EFFICIENCY MAINE TRUST REQUEST FOR PROPOSALS FOR
ASSESSMENT OF ENERGY EFFICIENCY AND DISTRIBUTED
GENERATION BASELINE AND OPPORTUNITIES IN MAINE**

RFP EM-002-2012

Date Issued: February 8th 2012

Closing Date: March 1th

Closing Time: 2:00 pm

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SECTION 1 – RFP INFORMATION AND INSTRUCTIONS

1.1 Title/Purpose

RFP EM-002-2012, Request for Proposals for Assessment of Energy Efficiency and Distributed Generation Baseline and Opportunities.

The Efficiency Maine Trust seeks a contractor or team of contractors to conduct a baseline study and quantify the opportunities for cost effective energy efficiency and distributed generation across all sectors in Maine.

1.2 Designated Contact Person for this RFP

Ian Burnes

Efficiency Maine Trust

U.S. Postal Service delivery only: 19 State House Station, Augusta, ME 04333-0019

All other delivery services: 101 Second Street, Hallowell, ME 04347

Email: ian.burnes@efficiencymaine.com

Phone: 207-213-4149

1.3 Schedule of Activities

Event	Date/Deadline
RFP Issued	February 8 th 2012
Question Period Closes	February 15 th 2012
Responses to Questions Posted	February 17 th 2012
Proposals Due at Efficiency Maine Trust Office	2:00 PM March 1 st 2012
Anticipated Award Date	March 9 th 2012
Anticipated Contractor Start	March 23 rd 2012

Schedule changes: Efficiency Maine Trust reserves the right to modify this schedule at its discretion. Any changes or additional information regarding the RFP schedule and pre-bid activities, including responses to questions, will be posted on the Efficiency Maine Trust website at: <http://www.efficiencymaine.com/opportunities>

Questions: Questions regarding this RFP must be submitted by email to the Contact Person listed in section 1.2 prior to the close of the Question Period specified above. The subject line of the email should be: RFP EM-002-2012 Questions.

1.4 Proposal Submittal Deadline

Proposals must be received at the Efficiency Maine Trust office by the due date and time specified above. Any proposal received after the exact date and time specified will not be

considered. Proposals must be complete when submitted; changes or additions will not be accepted after the specified due date and time, except for any clarifications requested of bidders by Efficiency Maine Trust. It is the responsibility of each bidder to ensure timely receipt of its proposal. Further details regarding proposal requirements are provided in section 4 of this RFP.

1.5 Cost of Proposal Preparation

Costs incurred in the preparation of any proposal in response to this RFP are the sole responsibility of the bidder.

1.6 Anticipated Contract Term

We anticipate that the term of the contract will be from March 2012 through August 2012.

SECTION 2 – BACKGROUND INFORMATION

2.1 Efficiency Maine

Efficiency Maine was established in 2002 as a statewide program to promote efficient use of electricity and help Maine residents and businesses reduce electricity costs, funded by assessments on electric utility customers and administered by the Maine Public Utilities Commission (MPUC). Through legislative action in 2009 (Public Law 2009, chapter 372), the Efficiency Maine Trust (Trust) was established as an independent entity to guide and administer energy efficiency and alternative energy programs in the State. Effective July 1, 2010, all Efficiency Maine programs were transferred from the MPUC to the Trust. As an independent, quasi-state agency, the Trust is governed by a 9-member Board of Trustees and is managed by an Executive Director with a staff of approximately 15. In implementing its programs, the Trust is guided by a three-year strategic plan, called the Triennial Plan.¹

2.2 Program Background and Context

In July of 2012 the Trust will be going into the last year of its first Triennial Plan. The scope of work outlined in this RFP is the first step in developing the second Triennial plan.

2.3 Additional Sources of Information

Additional information, which may assist bidders in preparing a response to this RFP is available as follows:

****key input area for the drafter****

TITLE	LOCATION (link)
Efficiency Maine Trust website	www.energymaine.com

¹ Available at: http://www.energymaine.com/docs/other/EMT_Final_Tri_Plan.pdf

Efficiency Maine Trust 2011 Annual Report	http://www.energymaine.com/docs/reports/2011-Annual-Report-12-01-2011-1-2.pdf
Efficiency Maine Trust – Triennial Plan	http://www.energymaine.com/docs/other/EMT_Final_Tri_Plan.pdf
Efficiency Maine Trust – Triennial Plan Annual Update	http://www.energymaine.com/docs/board_meeting_documents/Annual_Update_Dec_2011_FINAL.pdf
Evaluations	http://www.energymaine.com/documents-services-copy
Contracting Rule	http://www.energymaine.com/docs/AgencyRules/Chapter-1_Contracting_Final.pdf

SECTION 3 – SCOPE OF WORK

Task 1: Project Kick-Off Meeting

The project kick-off meeting will be an important first step to develop and ensure a common understanding of the project work plan and to finalize project deliverables.

Task 2: Secondary Research – Study Data Development

Conduct secondary research to develop energy efficiency measure data (savings, cost, useful life) and other key study inputs such as forecasted Maine energy sales, households, appliance and equipment saturations, and avoided costs. Identify any key data gaps to be addressed in the development and execution of on-site surveys. The Contractor will provide the Trust with a draft report of findings at the conclusion of this task.

Task 3: Develop On-site Survey Sampling Plan

Develop a sampling plan for on-site surveys for the primary purpose of determining the current penetration of energy efficiency measures in commercial and industrial buildings in Maine and addressing any key data gaps identified in Task 2. Residential on-site surveys may not be needed should the contractor be able to collect sufficient secondary research. The proposed sample should be designed to achieve 10% precision at a 90% confidence level (90/10). The sampling plan should also discuss how the sample will be drawn, expected precision levels within key building types such as retail and office, and options for optimizing the sample size with respect to gathering useful data on both the population and any identified key market segments and/or end uses. The Trust does not expect the survey to include distributed generation.

Task 4: Design Survey Instruments and Execute Surveys

The contractor will develop draft and final survey instruments for the site visits. The primary objective of the site visit surveys will be to determine equipment baselines including end-use penetrations, equipment type and energy efficiency levels. The survey will also address general building information, including occupancy, economic/ownership information, and operation schedules

Task 5 Develop Energy Efficiency Opportunity Estimates

The three key calculations that will be undertaken to complete this energy efficiency opportunity assessment are described below:

- The first step will be to estimate the technical potential for electric energy efficiency savings. Technical potential is defined as the complete penetration of all measures analyzed in applications where they are deemed to be technically feasible from an engineering perspective.
- The second step will be to estimate the economic energy efficiency potential. Economic potential is defined as the portion of the technical potential that is cost effective.
- The third step in the process is to develop an estimate of the Maximum Achievable Cost-Effective Potential. This estimated level of potential energy efficiency savings represents the highest realistic level of market penetration of all technically feasible and cost-effective measures.

Task 6: Develop Distributed Generation Potential Estimates

The three key calculations that will be undertaken to complete this Distributed Generation opportunity assessment are described below:

- The first step will be to estimate the technical potential for DG savings. Technical potential is defined as the complete penetration of distributed generation analyzed in applications where it is deemed to be technically feasible from an engineering perspective.
- The second step will be to estimate the economic DG potential. Economic potential is defined as the portion of the technical potential that is cost effective.
- The third step in the process is to develop an estimate of the Maximum Achievable Cost-Effective Potential. This estimated level of potential distributed generation savings represents the highest realistic level of market penetration of all technically feasible and cost-effective projects.

Tasks 7: Produce Draft and Final Report

Develop and fully documented Draft Report summarizing all findings and describing methodologies and detailed results. Contractor will provide the Trust with all relevant backup calculations and excel workbooks that allow the Trust to adjust key factors. The Trust expects the draft report to be completed by June 1st 2012.

SECTION 4 – EXPECTATIONS**4.1 Contractor Requirements**

The winning bidder will be responsible for adhering to the following requirements:

- **Confidentiality.** All Efficiency Maine Trust customer information is confidential, and the winning bidder, its staff, and its subcontractors will be required to sign a nondisclosure agreement before any customer data is released to the contractor.

- **Independence.** The Trust expects the winning contract to accomplish the work plan without unduly burdening the Trust staff with unnecessary work. This includes securing as much background data as possible without assistance from Trust Staff.
- **Adherence to deadlines.** It is of the utmost importance that the winning bidder adheres to the deadlines specified in their proposal.

4.2 Efficiency Maine Trust Responsibilities

Efficiency Maine Trust, through its designated Program Manager for this contract, will be responsible for overseeing and managing all work undertaken by the winning bidder, including but not limited to:

- Providing contract oversight and contract management
- Reviewing and approving invoices
- Making available the following items developed and used by current contractors, which are the property of the Efficiency Maine Trust:
 - The name Efficiency Maine and its logo
 - The Efficiency Maine website
 - Data collected by the current contractors and subcontractors
 - Work products developed by current contractors and subcontractors pursuant to contract with Efficiency Maine Trust
 - Names and contact of relevant market players

SECTION 5 – PROPOSAL REQUIREMENTS

Proposals that do not conform to the requirements specified in this RFP will not be accepted for consideration. Proposals that include teaming arrangements must designate one party as the lead bidder. Personnel who are proposed shall be the actual contract performers. There will be no substitution of personnel without prior written approval of Efficiency Maine Trust.

Please note that the responses to this RFP are public information and will not be considered confidential.

5.1 Submittal Instructions

One (1) original signed proposal and Five (5) hard copies, and one (1) electronic copy on CD in PDF format and/or in Microsoft Office software format, of the complete proposal must be submitted by the due date and time specified in section 1 of this RFP. The original, five hard copies, and CD must be delivered by mail or other physical means to the Designated Contact Person specified in section 1.2 in an envelope visibly labeled:

Response to RFP EM-002-2012, Request for Proposals for Assessment of Energy Efficiency and Distributed Generation Baseline and Opportunities.

5.2 Proposal Format

- Proposals must be typewritten, using a standard 12-point font with one-inch margins.
- Each page should state the name of the bidder, the RFP number, and the page number.
- Unnecessary attachments (i.e. any attachments beyond those sufficient to present a complete, comprehensive, and effective proposal) will not influence the evaluation of the proposal. Please do not send binders.
- Proposals must adhere to prescribed page limits. Please note that each printed side counts as one (1) page.
- While there are no page limits we expect bidders to be concise.

5.3 Proposal Content and Organization

The proposal must be organized as follows:

1. Letter of Transmittal: The proposal must include a brief Letter of Transmittal, on company letterhead, signed by an appropriate officer of the submitting entity who can bind the company to a contract.

2. Proposal Cover Sheet: The proposal must include a completed, signed Proposal Cover Sheet, which is provided in Attachment A.

3. Table of Contents

4. Statement of Work

- Provide an overview of the approach to the Scope of Work.
- Describe how the project will be implemented consistent with the requirements of RFP Section 3, Scope of Work.
- Specify the proposed work plan for accomplishing each individual task specified in the Scope of Work. Each task-specific work plan should outline the approach to the task and set a clear timeframe for completion.

5. Management Plan

- Identify all team members, including the Principal contact.
- Provide an organization chart of the project team and relationships, including the names and addresses of any subcontractors, and describe how activities will be coordinated among subcontractors and with the Trust.
- Provide a clear description of the roles and responsibilities.

6. Qualifications and Experience

- Describe the qualifications, experience and expertise of the project team members.
- List and briefly describe relevant projects that have been completed by the lead bidder and the team, clearly indicating which team members were responsible for each project described.
- Provide the name and telephone number of at least three references for whom your organization has similar relevant completed projects.
- Provide resumes of all team members in an Appendix.

8. Cost Proposal

- Provide the completed detailing the breakout of costs, including: labor hours, hourly rates and costs for all personnel, including any subcontractors; other direct costs; and total costs. All related expenses must be included and itemized. Any costs not included in the proposal will be disallowed.
- Provide a narrative explanation/justification of proposed project costs.

Appendices

- Provide resumes of key personnel.
- Provide letters of commitment from any subcontractors.

SECTION 6 – PROPOSAL EVALUATION AND AWARD

Proposals that are received by the submission deadline and that meet the requirements established in the RFP will be reviewed and evaluated by a proposal review team. Efficiency Maine Trust reserves the right to decide whether a proposal is or is not acceptable in terms of meeting the requirements of this RFP and to accept or reject any or all proposals received.

In evaluating proposals, Efficiency Maine Trust reserves the right to take any of the following steps, with respect either to all of the proposals received or to a subset of proposals selected as superior to the others: (1) consult with prior clients on the performance of the bidder or of particular persons proposed for this bid; (2) schedule presentations or interviews with representatives of the bidder or persons proposed for the project; (3) conduct a review of past performance, including a review of reports, analyses, or other materials that would reflect the bidder's performance; and (4) request additional data or supporting material.

6.1 Evaluation Criteria

Efficiency Maine Trust will review and evaluate proposals on the basis of the following criteria, which are described in subsequent paragraphs:

SCORING CATEGORY	MAXIMUM AVAILABLE POINTS
1. Experience and Personnel	35
2. Budget	30
3. Work Plan	35
Total	100

1. Experience and Personnel (35 points)

Points will be given to the contractor or team of contractors with proven experience in quantifying energy efficiency and distributed generation baselines conditions and identifying opportunities for cost effective savings. The Trust will look at resumes and past work products. Familiarity with the Maine market place will be a significant plus.

2. Budget (30 Points)

Points will be awarded on the basis of the lowest cost provider that provides the most comprehensive and credible budget for achieving the scope of work.

3. Work Plan (35 Points)

Points will be given to the contractor that presents a well organized and credible plan that meetings or exceeds the scheduling constraints outlined in this RFP.

6.2 Contract Award

Efficiency Maine Trust will notify all bidders of the contract award decision by email. The anticipated award date is specified in section 1.

Efficiency Maine Trust reserves the right to negotiate the final terms and conditions of the contract award with a winning bidder whose proposal is selected by the Trust, and to reject any winning bidder with whom the Trust cannot agree to terms and conditions meeting the Trust's needs, in the Trust's sole judgment.

SECTION 7 – GENERAL CONDITIONS

7.1 RFP Process – Reservation of Rights

Efficiency Maine Trust reserves the right to cancel or extend the RFP process at any time. Efficiency Maine Trust also reserves the right to reject any and all submissions in response to this RFP and to waive formalities if doing so is in the best interests of Efficiency Maine Trust.

7.2 Contract Agreement

A copy of the Efficiency Maine Trust **Standard Agreement** appropriate to this RFP is provided as **Attachment B**. This is the standard contract form that will complete the agreement on services between the winning bidder and Efficiency Maine Trust.

7.3 Billing

Invoices submitted for work performed under the resulting contract shall be sufficiently specific to allow Efficiency Maine Trust to evaluate charges billed in light of the tasks required. Each invoice must include a breakdown indicating the personnel who performed work; the date, nature, and duration of work; and the rate charged.

7.4 Termination of Contract

Efficiency Maine Trust reserves the right to terminate the contract for cause should the contractor fail to perform as required by the terms of the contract, or should the contractor's performance and effectiveness cause concerns for Efficiency Maine Trust. Should the contract be terminated for cause, the contractor is entitled to payment through the date of the termination for cause, and the contractor will provide sufficient information to justify the final invoicing.

7.5 Request for Reconsideration

An aggrieved person may request a hearing for reconsideration of a contract award decision by filing a written petition with the Executive Director of Efficiency Maine Trust within 14 calendar days of the notification of the contract award. Each petition to reconsider must meet the requirements specified in Efficiency Maine Trust Rule Chapter 1, Contracting Process for Service Providers and Grant Recipients, Section 5(B), which can be found on the Efficiency Maine Trust website under Documents and Services:

http://www.efficiencymaine.com/docs/AgencyRules/Chapter-1_Contracting_Final.pdf

**ATTACHMENT A
PROPOSAL COVER SHEET**

**RFP EM-002-2012, REQUEST FOR PROPOSALS FOR ASSESSMENT OF ENERGY
EFFICIENCY AND DISTRIBUTED GENERATION BASELINE AND OPPORTUNITIES.**

Date Issued: February 8th 2012

Closing Date: March 1st

Closing Time: 2:00 pm

COVER SHEET

This form MUST be completed, signed and attached to the front of your proposal.

Primary Contact (Prime Contractor):	Title:	
Organization:	Phone:	
	Fax:	
Address:	Email:	
City:	State/Prov:	Zip:
Alternate Contact:	Title:	
Organization:	Phone:	
	Fax:	
Address:	Email:	
City:	State/Prov:	Zip:

AN INDIVIDUAL AUTHORIZED TO COMMIT THE PRIME CONTRACTOR MUST SIGN THIS FORM BELOW AND ANSWER THE FOLLOWING QUESTIONS:	YES	NO
Do you accept all of the terms and conditions in the Standard Agreement (Attachment B)? (If not, explain your exceptions on a separate page)		
Does this proposal include more than one organization? (If yes, complete the Team Commitment form (provided on next page))		
This offer is valid for 180 days		
AUTHORIZED SIGNATURE		
I, the undersigned, am authorized to commit my organization to this proposal.		
Signature:	Printed Name:	
Title:	Organization:	
Date:	Phone/email:	

TEAM COMMITMENT

This form must be completed if the proposal includes more than one organization.

The following organizations are team members or sub-contractors participating in this proposal. The individuals signing below are authorized to commit their organizations to this proposal. By signing, each accepts all of the terms and conditions in the Standard Agreement (Attachment B) (if not, explain exceptions on a separate page), and states that this offer is valid for 180 days.

Please use additional forms if obtaining multiple signatures on a single page is difficult, or additional space is needed.

Organization:	
Authorized Signature:	Date:
Printed Name:	Title:

Organization:	
Authorized Signature:	Date:
Printed Name:	Title:

Organization:	
Authorized Signature:	Date:
Printed Name:	Title:

Organization:	
Authorized Signature:	Date:
Printed Name:	Title:

ATTACHMENT B
General Service Agreement

EFFICIENCY MAINE TRUST**SERVICES AGREEMENT**

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

WHEREAS, the Trust wishes to engage Provider to provide and perform certain services, and Provider wishes to provide and perform such services in accordance with the terms and conditions contained in this Agreement;

NOW, THEREFORE, for valuable consideration received or to be received, including but not limited to the performance by the Trust and the Provider (the "Parties") of their respective obligations under this Agreement, the Parties agree as follows.

1. SERVICES.

1.1 Provider will, throughout the Term, undertake, perform, provide and complete the services set forth in the Statement of Work appended hereto as Rider A, and such other written statements of work as may be agreed by the Parties (the "Services").

1.2 Services under this Agreement shall be authorized only by the Statement of Work ("SOW") (and through related purchase orders as may be issued by the trust) and through any additional SOWs that may be issued by the Trust from time to time during the Term. Each SOW, when executed by the Parties, shall be (i) effective and binding in accordance with its terms and subject to and in accordance with all other provisions of this Agreement, and (ii) deemed to incorporate and be governed by the terms of this Agreement as if set out fully therein (except solely to the extent expressly (by reference to this Agreement) stated in the SOW in writing). Any terms and conditions that may appear in or on order acknowledgements, invoices, or other documents of Provider have no force or effect with respect to this Agreement (including the applicable SOW) or Services and will not serve to alter, amend, or modify this Agreement or any SOW unless the Parties have expressly agreed to such new or additional terms in writing.

2. TERM.

2.1 This Agreement shall commence on [REDACTED], 20[REDACTED] and shall terminate on [REDACTED], 20[REDACTED] (the "Term"), unless earlier terminated in accordance with the provisions of this Agreement. Provider shall complete the Services within the Term. All provisions relating to document retention and review, audit, accounting, reporting, indemnity and remedies shall survive expiration or termination of this Agreement.

3. PRICE AND PAYMENT TERMS.

3.1 Subject to the terms of this Agreement, the Trust will pay Provider the Agreement Amount set forth in Rider A.

3.2 The Agreement Amount shall be disbursed to Provider by the Trust in accordance with the Payment Schedule set forth in Rider A. The Trust's obligations to make payments or disbursements to Provider is conditioned on the following:

- (i) Provider is not in breach of any of the terms or conditions of this Agreement;
- (ii) Provider has submitted properly documented reimbursement requests and invoices;
- (iii) Provider has produced or provided all necessary documents and reports as may be required by this Agreement;
- (iv) The Services are performed fully in accordance with the Statement of Work.

3.3 The Trust will not reimburse Provider for any cost or expense that is contrary to this Agreement or any restriction or limitation contained in any applicable law, rule, regulation or policy.

3.4 Provider shall ensure that all prices, terms, and warranties included in this Agreement are comparable to, or better than, the equivalent terms being offered by the Provider to any present customer meeting the same qualifications or requirements as the Trust. If, during the term of this Agreement, the Provider enters into agreement(s) that provide more favorable terms to other comparable customer(s), the Provider shall provide the same terms to the Trust.

3.5 By submitting any invoice or request for reimbursement, Provider is representing that the Services or costs identified in the invoice or request for reimbursement are within the approved Statement of Work, and that such costs and expenses are allowable, allocable, and reasonable in accordance with this Agreement and all applicable laws, rules, regulations, and policies.

3.6 By paying all or a portion of any invoice or request for reimbursement, the Trust does not waive its ability to challenge any invoice or reimbursement for failing to comply with this Agreement.

4. STANDARDS OF PERFORMANCE; SERVICES WARRANTY.

4.1 Provider shall provide and perform the Services in a timely, professional, and workmanlike manner and in strict accordance with the terms of this Agreement. Provider shall exercise best efforts in the performance of the Services.

4.2 Provider shall furnish or arrange for all qualified personnel, facilities, equipment, materials, and services as necessary for the performance of the Services. Provider shall provide and maintain competent and adequate supervision of the Services to ensure that all work conforms to the Statement of Work and the Agreement.

4.3 Provider shall maintain a project schedule to ensure completion within the Term of this Agreement and any agreed project schedule. Timely performance of the Project is an essential condition of this Agreement.

4.4 Provider shall, and shall ensure that its subcontractors, conform to applicable state, federal, and local laws, ordinances, rules, regulations, and standards in the performance of this Agreement and the Services.

4.5 Provider shall keep the Trust apprised of all material developments in connection with the Services and shall consult and coordinate with the Trust, through its Agreement Administrator, as necessary in the performance of the Services. The Trust reserves the right to monitor Provider's performance of this Agreement, including the performance of any subcontractor, in order to verify compliance.

4.6 Provider shall perform the Services with the degree of skill, care and diligence observed by reputable national firms performing the same or similar services. Provider shall be responsible for the professional quality, technical accuracy, completeness and coordination of all reports, designs, plans, information, specifications, and other items and work provided under this Agreement. Upon notice of substandard Services, Provider shall, at a minimum, reperform the Services and correct or revise any errors or deficiencies in its reports, designs, drawings, plans, information, specifications and other aspects of the Services as necessary, without any cost or charge to the Trust. If Provider should fail to

reperform the Services, or if the Trust determines that the Provider will be unable to correct the substandard Services within a reasonable time period, the Trust may correct the Services by itself or through a third party and charge Provider for the costs incurred. The rights and remedies of the Trust under this provision are in addition to any other rights and remedies provided by law.

5. PROVIDER REPRESENTATIONS.

5.1 Provider shall abide by the General Terms and Conditions of this Agreement set forth in Rider B, which General Terms and Conditions are expressly incorporated in and made part of this Agreement.

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

5.3 Provider represents that it is not suspended, debarred or disqualified from receiving state contracts, grants or other appropriations.

5.4 Provider represents 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.

6. SUSPENSION OF SERVICES.

6.1 The Trust reserves the right to suspend the Services, with or without cause, in whole or in part, upon giving notice to Provider. Provider shall resume the Services so suspended when requested to do so by the Trust. If only a portion of the Services is suspended, Provider shall be compensated only for the Services performed during such suspension. Provider shall advise the Trust of any costs to be incurred as a result of the planned suspension of the Services. Any reimbursement of costs shall be limited to Provider's reasonable costs incurred as a direct result of the suspension and shall be subject to verification.

7. TERMINATION OF AGREEMENT.

7.1 The Trust may declare Provider to be in default of this Agreement upon the occurrence of any of the following Events of Default:

- (i) Provider's material breach of any covenant, condition, or obligation under this Agreement;
- (ii) Provider's violation of law;
- (iii) Provider's failure to make regular and substantial progress toward the performance and completion of the Services as required in the Statement of Work;
- (iv) Provider's failure to provide any periodic or final reporting or accounting as required under this Agreement or applicable law, rule, or regulation; or
- (iv) 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 Provider with fifteen (15) 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 fifteen (15) days after the Trust has provided Provider with the written notice of intent to terminate. The Trust shall have no further obligation to Provider after termination. The Trust reserves the right to terminate this Agreement immediately upon an Event of Default that may not be reasonably cured.

7.3 Notwithstanding anything to the contrary in this Agreement, the Trust may terminate this Agreement without penalty by giving thirty (30) days' notice to Provider in the event that funds are de-appropriated or not allocated (whether for a specific project or program or for the Trust generally), the

state government reduces or eliminates funding necessary for the Agreement, 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 legislation affecting the Trust's duties or operations, or for any other reason that the Trust determines is in the best interest of the State. In such event, the Agreement shall be equitably adjusted to account for such termination and Provider shall be paid for all satisfactory work performed and expenses incurred within thirty (30) days after such notice of termination (as directed by the Trust or with written approval of the Trust), but in no event in excess of the maximum amount payable under this Agreement.

7.4 If the Trust terminates this Agreement for any breach by Provider it will have the right (but not the obligation), and is hereby granted all necessary rights and licenses, to:

- (i) directly, or through any other contractor or service provider, take possession of the unfinished Services, wherever situate, and utilize such unfinished Services and complete the Services by whatever method it may deem expedient, but without undue delay or expense;
- (ii) require prompt delivery to the Trust of any or all deliverables and other designs, drawings, documents, work-in-progress, materials and other property of any kind (whether tangible or intangible) intended to form part of Services;
- (iii) withhold any further payments to Provider until this Agreement is fully completed to the Trust's satisfaction; and
- (iv) upon full performance and completion of this Agreement to the satisfaction of the Trust, set off the full cost of completing this Agreement and the Services, together with a reasonable allowance to cover any future defects, replacements or other costs as may be required or anticipated in connection with Provider's obligations under this Agreement against any amounts owing by the Trust under this Agreement or otherwise under any other dealings between Provider and the Trust or the State, and thereupon charge Provider the balance (if any), which amount is recoverable from and payable by Provider forthwith upon demand.

7.5 The Trust reserves all rights and remedies available at law or in equity in the event of a breach of this Agreement by Provider including, without limitation, recovery of the Agreement Amount paid under 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.

8. MISCELLANEOUS PROVISIONS.

8.1 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 Provider regarding this Agreement shall be brought in State of Maine administrative or judicial forums.

8.2 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 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.

8.3 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. 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.

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

- Rider A – Statement of Work; Price and Payment Terms
- Rider B – General Terms and Conditions
- Rider C – Special Terms and Conditions [As Necessary]

8.5 All progress reports, correspondence and related submissions from the Provider shall be submitted to:

Name: _____
 Title: _____
 Address: _____

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 Term of this Agreement. 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 Provider, subject to the approval of the Executive Director of the Trust.

8.6. 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 Provider, by their authorized representatives, have executed this Agreement in _____ original copies.

Notwithstanding anything to the contrary herein, this Agreement shall not be binding on the Trust until approved by the Executive Director of the Trust.

EFFICIENCY MAINE TRUST

By: _____

 Michael D. Stoddard, Executive Director

Date: _____

PROVIDER _____

By: _____

Name and Title, Provider Representative

Date: _____

RIDER A

STATEMENT OF WORK

Contract Number: [REDACTED]

[INSERT DETAILS OF SERVICES TO BE PROVIDED]

PRICE AND PAYMENT TERMS

Agreement Amount: [REDACTED]. The total payments to Provider under this Agreement shall not exceed the Agreement Amount unless expressly authorized in advance by the Trust through a written amendment or change order.

INVOICES AND PAYMENTS. The Trust will pay the Provider as follows:

Invoices must be submitted on approved forms and must contain sufficient detail to allow proper cost allocation. Invoices must be accompanied by supporting documentation. Invoices must reference the Contract number and contractor or vendor registration number. All invoices require the following:

(a) All invoices must include the vendor's Federal ID Number.

(b) All invoices must include either the Purchase Order number or the Contract number relating to the commodities/services provided.

(c) In cases where hourly rates of contracted resources are concerned, invoices must contain a copy or copies of time sheets associated with that invoice. Time sheets will need to be reviewed and approved by the Agreement Administrator.

Payments are subject to the Provider's compliance with all terms set forth in this Agreement. No invoice will be processed for payment until approved by the Agreement Administrator. The Trust will process approved payments within 30 days. The Trust is not responsible for any direct payments to Provider's subcontractors or vendors.

Provider shall maintain and retain documentation for all charges and costs claimed under this Agreement.

RIDER BGENERAL TERMS AND CONDITIONS

1. INDEPENDENT CAPACITY. In the performance of this Agreement, the Parties hereto acknowledge that Provider, and any subcontractors, agents and employees of Provider, shall act in the capacity of an independent contractor and not as officers, employees or agents of the Trust or the State. Provider shall be solely responsible for all taxes resulting from the payments made under the Agreement. Provider shall be solely responsible for the payment of wages and benefits to its employees and the payment of contract and service fees to its subcontractors. Provider shall be solely responsible for all income and employment tax obligations as to Provider's employees and agents. Provider shall be responsible for the performance and conduct of its subcontractors, agents, and employees in connection with the Project.
2. CHANGES IN THE WORK. The Trust may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment or change order, signed by both parties and approved by the Director of the Trust. Said amendment must be effective prior to execution of the work.
3. PROVIDER PERSONNEL. The Parties recognize that the primary value of the Provider to the Trust derives directly from its Key Personnel assigned in the performance of this Agreement. Key Personnel are deemed to be those individuals whose résumés were offered by the Provider in the Proposal. Therefore, the Parties agree that said Key Personnel shall be assigned in accordance with the time frames in the most recent mutually agreed-upon project schedule and work plan, and that no re-deployment or replacement of any Key Personnel may be made without the prior written consent of the Agreement Administrator. Replacement of such personnel, if approved, shall be with personnel of equal or greater abilities and qualifications. The Trust shall retain the right to reject any of the Provider's employees whose abilities and qualifications, in the Trust's judgment, are not appropriate for the performance of this Agreement. In considering the Provider's employees' abilities and qualifications, the Trust shall act reasonably and in good faith. During the course of this Agreement, the Trust reserves the right to require the Provider to reassign or otherwise remove any of its employees found unacceptable by the Trust. In considering the Provider's employees' acceptability, the Trust shall act reasonably and in good faith. In signing this Agreement, the Provider certifies to the best of its knowledge and belief that it, and all persons associated with this Agreement (including any subcontractors and persons or corporations who have critical influence on or control over this Agreement) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal or State department or agency. During the course of this Agreement, the Trust reserves the right to require a background check on any of the Provider's personnel (employees and subcontractors) that are in any way involved in the performance of this Agreement.
4. SUBCONTRACTING AND ASSIGNMENT. Provider shall not assign or otherwise transfer or dispose of its rights, interest, duties or obligations under this Agreement without the prior express written consent of the Trust. Provider shall not subcontract all or any portion of the work to be performed under this Agreement without the prior express written consent of the Trust. The consent of the Trust to any assignment or subcontract shall not relieve Provider of its responsibility for performance of the work and compliance with the Agreement. All subcontractors shall be bound by the terms and conditions of the Agreement. Provider shall be responsible for the compliance and performance of its subcontractors in accordance with the requirements of the Agreement. Provider is solely responsible for ensuring that any subcontract in connection with the Project contains all pass through or flow down provisions as may be required under applicable laws, rules, and regulations.
5. EQUAL EMPLOYMENT OPPORTUNITY.

- a. Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation. Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.
 - b. Provider shall, in all solicitations or advertising for employees placed by or on behalf of Provider relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.
 - c. Provider shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - d. The Provider shall inform the Trust of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, and Office of Civil Rights) against it by any individual as well as any lawsuit regarding alleged discriminatory practice.
 - e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.
 - f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.
 - g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
6. EMPLOYMENT AND PERSONNEL. Provider 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). Provider shall not engage on a full-time, part-time or other basis during the Term of this Agreement, any other personnel who are or have been at any time during the Term of this Agreement 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. Provider shall not engage on this Project on a full-time, part-time or other basis during the Term of this Agreement 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. Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing

provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

7. STATE EMPLOYEES NOT TO BENEFIT. No individual employed by the Trust or the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise there from directly or indirectly that would constitute a violation of 5 MRSA § 18-A or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise there from directly or indirectly due to his or her employment by or financial interest in Provider or any affiliate of Provider, without the written consent of the Executive Director of the Trust. Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
8. NO SOLICITATION WARRANTY. Provider 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 Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Trust shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
9. LOBBYING. No Federal or State-appropriated funds shall be expended by the Provider for influencing, or attempting to influence, an officer or employee of any agency, a member of Congress or State Legislature, an officer or employee of Congress or State Legislature, or an employee of a member of Congress or State Legislature, in connection with the awarding of any agreement or the entering into any cooperative agreement; or the extension, continuation, renewal, amendment, or modification of any agreement or cooperative agreement.
10. RECORD RETENTION AND INSPECTION; SITE VISITS. Provider shall retain during the Term of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (“MAAP”) rules all records, in whatever form, that directly pertain to, and involve the work to be performed under this Agreement. Without limitation, Provider shall maintain all books, documents, payrolls, papers, accounting records, and other evidence pertaining to this Agreement, including interim reports and working papers, and make such materials available at its offices at all reasonable times during the period of this Agreement, and for a period of five (5) years following termination or expiration of the Agreement. If any litigation, claim or audit is started before the expiration of the 5-year period, the records must be retained until all litigation, claims or audit findings involving the agreement have been resolved. Provider shall permit the Trust or any authorized representative of the State of Maine, (a) to examine such records; and (b) to interview any officer or employee of Provider or any of its subcontractors regarding the work performed under this Agreement. Provider shall furnish copies of such records upon request. The Trust’s authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems. Provider must provide, and must require its subcontractors to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the Trust’s representatives in the performance of their duties. All site visits and evaluations will be performed in a manner that does not unduly interfere with or delay the work. Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor.
11. ACCESS TO PUBLIC RECORDS. As a condition of accepting any public funds under this Agreement, Provider hereby agrees to treat all records, other than proprietary information,

relating to personal services work performed under the Agreement as public records under the freedom of access laws to the same extent as if the work were performed directly by the Trust. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of Provider and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the contract and information concerning employee and contract oversight and accountability procedures and systems are not proprietary information. Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Trust or any authorized representative of the State of Maine, and shall furnish copies thereof, if requested.

12. GOVERNMENTAL REQUIREMENTS. Provider warrants and represents that it will comply with all governmental laws, rules, regulations and ordinances. Provider is responsible to obtain and maintain all permits, licenses, and other approvals as may be required under federal, state, or local laws for the performance of any work or services under this Agreement.
13. STATE HELD HARMLESS. Provider agrees to indemnify, defend and save harmless the State, its officers, agents and employees, including, without limitation, the Trust and its trustees, officers, directors, agents and employees, from any and all claims, costs, fees, expenses (including attorney fees and legal expenses), injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "Claims") resulting from or arising out of the performance of this Agreement by Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, without limitation, the following: (i) Claims suffered or incurred by any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as "person") providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) Claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) Claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement, including Provider's employees, agents, and subcontractors; and (v) all legal costs and other expenses of defense against any asserted Claims to which this indemnification applies. Provider's indemnity obligations apply without regard to any immunity that might otherwise be accorded under the workers' compensation laws. This indemnification does not extend to a claim that results solely and directly from (i) the Trust's gross negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given in writing by an authorized person acting on behalf of the Trust in accordance with this Agreement.
14. NOTICE OF CLAIMS. Provider 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 duties under the Agreement, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement. Provider shall indemnify and hold the Trust harmless from and against any such Claims.
15. APPROVAL. This Agreement must have the approval of the Executive Director of the Trust before it can be considered a valid, enforceable document.
16. INSURANCE. Provider shall keep in force a commercial general liability insurance policy, workers' compensation policy, and a professional liability policy issued by a company or

companies fully licensed to do business in the State of Maine, which policies include the activity to be covered by this Agreement with adequate liability coverage to protect the Provider and the Trust from suits. Such policies shall comply with the following minimum requirements:

Minimum Coverage. Provider's insurance policies shall contain the following minimum coverage:

- (i) Commercial general liability (including products, completed operations, and broad-form contractual liability coverage): \$1,000,000 per occurrence;
- (ii) Workers' Compensation and employer's liability: as required by law;
- (iii) Professional liability: \$1,000,000; and
- (iv) Property (including contents coverage for all records maintained pursuant to this Agreement): \$1,000,000 per occurrence.

Other Provisions. Unless explicitly waived by the Trust, the insurance policies should contain, or be endorsed to contain, the following provisions:

- (i) Provider's insurance coverage shall be the primary insurance. Any insurance or self-insurance maintained by the Trust for its officers, agents, and employees shall be in excess of the Provider's insurance and shall be non-contributory.
- (ii) Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (iii) Provider shall furnish the Trust with certificates of insurance and with those endorsements, if any, effecting coverage required by these Insurance Requirements. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Trust before this Agreement commences. The Trust reserves the right to require complete, certified copies of all required insurance policies at any time.
- (iv) All policies should contain a revised cancellation clause allowing thirty (30) days notice to the Trust in the event of cancellation for any reason, including nonpayment.

17. NON-APPROPRIATION. Notwithstanding any other provision of this Agreement, if the Trust does not receive sufficient appropriations to fund this Agreement and other obligations of the Trust, if funds are de-appropriated, or if the Trust does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, or if there is a restriction on use or disbursement of federal funds allocated to this Agreement, then the Trust is not obligated to make payment under this Agreement.

18. FORCE MAJEURE. Either Party may be excused from the performance of an obligation under this Agreement in the event that performance of that obligation by a Party is prevented by an act of God, act of war, riot, fire, explosion, flood, or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, strike, or labor dispute, provided that any such event, and the delay caused thereby, is beyond the control of, and could not reasonably be avoided by that Party. Upon the occurrence of an event of force majeure, the time period for performance of the obligation excused under this section shall be extended by the period of the excused delay, together with a reasonable period, to reinstate compliance with the terms of this Agreement.

19. CONFLICTS OF INTEREST. Provider shall not undertake any activity in connection with this Agreement that constitutes or reasonably could give rise to a conflict of interest. The Provider certifies that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of the services or work under this Agreement. The Provider further certifies that in the performance of this Agreement, no person having any such known interests shall be employed.

20. SET-OFF RIGHTS. Without limiting any other right or remedy, the Trust and the State 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 Provider under this Agreement up to any amounts due and owing to the Trust with regard to this Agreement, or any other Agreement with any State agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The Trust and the State shall exercise set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

21. NO THIRD-PARTY BENEFICIARIES. There are no express or intended third-party beneficiaries. No person or entity that is not a party to this Agreement may assert any right or make any claim under this Agreement.
22. SITE VISITS. The Trust, and its authorized representatives, have the right to make site visits at reasonable times to review project accomplishments and management control systems and to inspect the work. Provider must provide, and must require any subcontractors to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives to perform their duties. All site visits will be performed in a manner that does not unduly interfere with or delay the work.
23. CONFIDENTIALITY. All materials and information given to the Provider by the Trust, or acquired by the Provider on behalf of the Trust, whether in verbal, written, electronic, or any other format, shall be regarded as confidential information. In conformance with applicable Federal and State statutes, regulations, and ethical standards, the Provider and the Trust shall take all necessary steps to protect confidential information regarding all persons served by the Trust, including the proper care, custody, use, and preservation of records, papers, files, communications, and any such items that may reveal confidential information about persons served by the Trust, or whose information is utilized in order to accomplish the purposes of this Agreement. In the event of a breach of this confidentiality provision, the Provider shall notify the Agreement Administrator immediately. The Provider shall, to the extent applicable, comply with Maine Public Law 10 MRSA §1347 (Notice of Risk to Personal Data Act).
24. INTELLECTUAL PROPERTY. The Provider certifies that all services, equipment, software, supplies, and any other products provided under this Agreement do not, and will not, infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any claim by a third party against the Trust, the Trust shall promptly notify the Provider and the Provider, at its expense, shall defend, indemnify, and hold harmless the Trust against any loss, cost, expense, or liability arising out of such claim, including reasonable attorney fees. The Provider may not publish or copyright any data without the prior approval of the Trust. The State shall have the right to publish, duplicate, use, and disclose all such data in any manner, and for any purpose whatsoever, and may authorize others to do so.
25. OWNERSHIP OF DATA. All data, notebooks, plans, working papers and other works produced, and equipment and products purchased by the Trust in the performance of this Agreement are the property of the Trust, or the joint property of the Trust and the Federal Government, if Federal funds are involved. The Trust (and the Federal Government, if Federal funds are involved) shall have unlimited rights to use, disclose, duplicate, or publish for any purpose whatsoever all information and data developed, derived, documented, or furnished by the Provider under this Agreement, or equipment and products purchased pursuant to this Agreement. The Provider shall furnish such information and data, upon the request of the Trust, in accordance with applicable Federal and State laws. Upon termination of this Agreement for any reason, or upon request of the Trust, the Provider agrees to convey to the Trust good title to purchased items free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.
26. STATE-FUNDED PROJECT; ENFORCEABILITY. Provider understands that funding for this Project may be from designated State funds. Provider agrees to abide by all reporting and

operational requirements governing the use of such funds. If Provider or one of its subcontractors fails to comply with these Terms and Conditions and all applicable requirements governing the use of State funds, the Trust may take appropriate action, including but not limited to withholding or suspension, in whole or in part, of payments and the recovery of misspent funds following an audit. This provision is in addition to all other remedies available to the Trust under all applicable state and federal laws. The Trust has the right to cancel or terminate the Agreement if Provider or its subcontractors fails to comply with the operational or reporting requirements contained herein.

27. **ADDITIONAL CONTRACTING REQUIREMENTS.** All requirements, restrictions and obligations regarding the use of State funds and contract 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 funds or contract awards are automatically incorporated in the Agreement without the necessity of a formal written amendment. Provider agrees to comply with all such requirements, restrictions and obligations and shall cause its subcontractors to comply with all such requirements, restrictions and obligations.