

## EFFICIENCY MAINE TRUST

### Services Agreement

Services Agreement No. [REDACTED]

This Services Agreement (this "Agreement"), dated as of [DATE] (the "Effective Date"), is by and between [PROVIDER NAME], a [STATE OF ORGANIZATION] [corporation/LLC/partnership/proprietorship], with offices located at [ADDRESS] ("Provider") and Efficiency Maine Trust, an independent, quasi-state agency of the State of Maine with offices located at 168 Capitol Street, Suite 1, Augusta, ME 04330-6856 ("Trust").

WHEREAS, Trust desires to retain Provider to provide certain services under the terms and conditions hereinafter set forth, and Provider is willing to perform such services on such term and conditions;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Provider and Trust (hereinafter, collectively, the "Parties," or each, individually, a "Party") agree as follows:

1. Services. Provider shall provide to Trust the services (the "Services") set out in one or more statements of work to be issued by Trust and accepted by Provider (each, a "Statement of Work"). The initial accepted Statement of Work is attached hereto as **Exhibit A**. Additional Statements of Work (if any) shall be deemed accepted and incorporated into this Agreement only if signed by the Provider and the Trust. This Agreement expressly limits Provider's acceptance of any SOW to the terms of this Agreement. The terms set forth in this Agreement prevail over any terms and conditions contained in any order acknowledgement or any other document issued by Provider in connection with this Agreement. Provider shall provide the Services (a) in accordance with the terms and subject to the conditions set forth in the respective Statement of Work and this Agreement; (b) using personnel of required skill, experience, and qualifications; (c) in a timely, workmanlike, and professional manner; and (d) to the reasonable satisfaction of the Trust.

2. Provider Obligations. Provider shall in its provision of the Services:

2.1 Assign only qualified, legally authorized personnel to provide the Services.

2.2 Comply with all applicable laws and regulations in providing the Services and maintain in effect all licenses, authorizations, consents, and permits needed to carry out this Agreement.

2.3 Comply with all Trust policies of which it has been made aware.

2.4 Maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent and materials used by Provider in providing the Services in such form as Trust shall approve. During the Term of this Agreement and for a period of three years thereafter, upon Trust's written request, Provider shall allow Trust or Trust's representative to inspect and make copies of such records; provided that Trust provides Provider with reasonable advance written notice of the planned inspection.

3. Fees and Expenses.

3.1 For the Services to be performed hereunder, the Trust will pay to Provider a fee determined in accordance with the fee schedule set out in each Statement of Work. Unless otherwise provided in the Statement of Work, said fee will be payable within 30 days of receipt by the Trust of an invoice from Provider accompanied by documentation reasonably requested by the Trust evidencing all charges.

3.2 The Trust shall reimburse Provider for all reasonable and necessary expenses incurred in accordance with the Statement of Work, if such expenses have been pre-approved, in writing by the Trust, within 30 days of receipt by the Trust of an invoice from Provider accompanied by receipts and supporting documentation reasonably acceptable to the Trust. All Provider expenses not meeting the requirements of this Agreement or the Statement of Work to which it applies shall be the sole responsibility of the Provider.

4. Intellectual Property. Provider certifies that all services, works, deliverables and any other materials 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. Provider shall deliver all works and materials free of all liens and encumbrances. All deliverables, works and materials created or produced by Provider for or on behalf of the Trust under this Agreement are deemed “works made for hire” and shall be owned by the Trust. To the extent any deliverables, works or materials produced or provided under this Agreement are not, by operation of law, “works made for hire,” Provider shall, and does hereby, assign all right, title, and interest, including copyright, in such deliverables, works and materials to the Trust, and where such rights are not assignable, Provider hereby grants an irrevocable, perpetual, fully paid-up, royalty-free, non-exclusive license to the Trust to use, duplicate, publish and modify all such deliverables, works and materials for any purpose whatsoever.

5. Confidentiality. All materials and information given to the Provider by the Trust, developed by Provider for the Trust, or acquired by the Provider on behalf of the Trust, whether in verbal, written, electronic, or any other format, shall be regarded by the Provider as confidential information. It is expressly agreed and understood by the Provider that all energy usage profile information or other utility data of any identifiable utility customer, including name, address, email address, and telephone number, is confidential and shall not be used or disclosed by the Provider, its personnel or subcontractors, except as authorized by the Trust and as strictly necessary for the performance of Services, and for no other reason. Provider 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. Without limiting Provider’s obligations under any other law, Provider shall, and shall ensure that its personnel, including subcontractors, comply with the confidentiality provisions of the Efficiency Maine Trust Act, 35-A MRSA §10106, the Efficiency Maine Trust General Confidentiality Guidelines Memo appended to the Efficiency Maine Trust Confidential Information Management System Policy (“CIMS Policy”), the Confidentiality, Non-Disclosure and Protective Agreement appended to the CIMS Policy, and any applicable order of the Maine Public Utilities Commission with respect to the use and handling of confidential information. The Provider shall cause its personnel, including subcontractors, to enter into a written confidentiality and non-disclosure agreement on terms to the same effect as those contained in this Agreement confirming each such person’s obligations to protect confidential information from unauthorized use or disclosure, and the Provider shall provide copies of all such written acknowledgements to the Trust upon request. The Provider will be liable for any breach of this Agreement by its personnel, including subcontractors.

6. Term, Termination, and Survival.

6.1 This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of the Services under all Statements of Work, unless sooner terminated pursuant to the terms of this Agreement.

6.2 Trust, in its sole discretion, may terminate this Agreement or any Statement of Work, in whole or in part, at any time without cause, or for convenience, and without liability except for required payment for services rendered and reimbursement for authorized expenses incurred prior to the termination date, by providing at least 10 calendar days' prior written notice to Provider.

6.3 Either Party may terminate this Agreement, effective upon written notice to the other Party (the "Defaulting Party"), if the Defaulting Party:

(a) Breaches this Agreement, and such breach is incapable of cure, or with respect to a breach capable of cure, the Defaulting Party does not cure such breach within 30 days after receipt of written notice of such breach.

(b) Becomes insolvent or admits its inability to pay its debts generally as they become due; becomes subject, voluntarily or involuntarily, to any proceeding under any bankruptcy or insolvency law, which is not fully stayed within seven business days or is not dismissed or vacated within 30 days after filing; or is dissolved or liquidated or takes any corporate action for such purpose; makes a general assignment for the benefit of creditors; or has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

6.4 Upon expiration or termination of this Agreement for any reason, Provider shall promptly:

(a) Deliver to Trust all documents, work product, and other materials, whether or not complete, prepared by or on behalf of Provider in the course of performing the Services for which Trust has paid.

(b) Return to Trust all Trust-owned property, equipment, or materials in its possession or control and all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on Trust confidential information.

(c) Provide reasonable cooperation and assistance to Trust upon Trust's written request and at Trust's expense, in transitioning the Services to an alternate Provider.

(d) On a pro rata basis, repay all fees and expenses paid in advance for any Services which have not been provided.

6.5 Any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

7. Independent Contractor. It is understood and acknowledged that the Services which Provider will provide to Trust hereunder shall be in the capacity of an independent contractor and not as an employee or agent of the Trust. Provider shall control the conditions, time, details, and means by which Provider performs the Services. The Trust shall have the right to inspect the work of Provider as it progresses solely for the purpose of determining whether the work is completed according to the applicable Statement of Work. Provider has no authority to commit, act for or on behalf of the Trust, or to bind the Trust to any obligation or liability. Provider shall be solely responsible for the payment of all taxes relating to the fees earned by Provider hereunder and shall be solely responsible for the payment of all fees, wages, benefits and payroll taxes for or on behalf of its agents and employees performing Services.

8. Indemnification. Provider shall indemnify, defend, and hold harmless Trust and its trustees, officers, employees, agents, affiliates, and successors against any and all losses, damages, liabilities, claims, actions, judgments, settlements, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, incurred by or awarded against the Trust relating to, arising out of or resulting from Provider's or its agents' negligence, willful misconduct, or breach of this Agreement, including claims made by Provider's employees. Provider's indemnity obligations apply without regard to any immunity that might otherwise be accorded under the workers' compensation laws and apply without regard to any alleged negligence of the Trust.

9. Remedies. If the Provider violates any provision of this Agreement, the Trust shall, in addition to any damages to which it is entitled, be entitled to seek immediate injunctive relief against the Provider prohibiting further actions inconsistent with the Provider's obligations under this Agreement. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by the Trust of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available. To the extent the Trust is required to seek enforcement of this Agreement, Provider shall be liable for all attorney's fees and costs incurred by the Trust to enforce the provisions of this Agreement. Notwithstanding anything to the contrary, the Parties intend that the Provider's exclusive remedy for a Trust payment breach shall be its right to damages equal to its earned but unpaid fees. In no event shall the Trust be liable or responsible for any indirect, incidental, consequential, or exemplary damages of any kind. The Trust is a quasi-state agency and reserves all limitations and immunities from liability as afforded by or permitted under applicable law. Nothing in this Agreement is intended nor shall be construed as a waiver of any governmental immunity applicable to the Trust.

10. Insurance. Provider shall, at its own expense, maintain and carry insurance in full force and effect with financially sound and reputable insurers, that includes, but is not limited to, commercial general liability with limits no less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate, including bodily injury and property damage and completed operations and advertising liability, which policy will include contractual liability coverage insuring the activities of Provider under this Agreement. If it shall have any employees providing services, Provider shall also provide workers' compensation insurance covering those employees in the manner required by governing law. Upon Trust's request, Provider shall provide Trust with a certificate of insurance from Provider's insurer evidencing the insurance coverage specified in this Agreement. The certificate of insurance shall name Trust as an additional insured. Except where prohibited by law, Provider shall require its insurer to waive all rights of subrogation against Trust's insurers and Trust or the Indemnified Parties.

11. Miscellaneous Provisions. This Agreement, including and together with any related exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement. No amendment to, or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. Provider shall not assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of Trust. Any purported assignment or delegation in violation of this Agreement shall be null and void. No assignment or delegation shall relieve the Provider of any of its obligations hereunder. Trust may at any time assign or transfer any or all of its rights or obligations under this Agreement without Provider's prior written consent. This Agreement and all matters arising out of or relating to this Agreement, is governed by, and is to be construed in accordance with, the laws of the State of Maine, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Maine, and any action, litigation or proceeding relating to this Agreement shall be brought exclusively in the state or federal courts located in Maine.

12. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Services Agreement to be executed as of the Effective Date by their duly authorized representatives.

[PROVIDER NAME]

EFFICIENCY MAINE TRUST

By \_\_\_\_\_

Name:

Title:

By \_\_\_\_\_

Name: Michael Stoddard

Title: Executive Director

[EXHIBIT A]

EFFICIENCY MAINE TRUST

Statement of Work

Services Agreement No. [REDACTED]

SOW No. [REDACTED]

SOW Date: [REDACTED]

This Statement of Work ("**SOW**") adopts and incorporates by reference the terms and conditions of the Services Agreement between [**SERVICE PROVIDER NAME**] ("Provider") and Efficiency Maine Trust ("Trust") dated [**DATE**] ("Services Agreement"). All work, services, and transactions performed under this SOW will be conducted in accordance with and be subject to the terms and conditions of this SOW and the Services Agreement. Capitalized terms used but not defined in this Statement of Work shall have the meanings set out in the Services Agreement.

1. Scope of Work. [**PROJECT SUMMARY**].
2. [**Performance Schedule and Deliverables**]. The relevant milestones, completion dates, and terms associated with this SOW are as follows:

Line Item	Task	Completion Date
1		
2		
3		

Provider acknowledges that time is of the essence with respect to Provider's obligations hereunder and that prompt and timely performance of all such obligations is strictly required.

The relevant deliverables associated with this SOW are as follows:

Line Item	Quantity	Deliverable	Delivery Date	Delivery Location
4				
5				
6				

3. Pricing. All costs listed below are based on the scope and assumptions included in this SOW.

Item	Price/Rate	[Cost Structure (Fixed Fee or Time and Materials)]
<b>Total:</b>		

Services invoiced in excess of a stated "fixed fee" or "not to exceed" amount will not be compensated unless expressly approved by the Trust in advance and in writing.

4. Agreement Administrators.

4.1 Provider designates [redacted] to serve as its authorized representative and primary contact with respect to all matters pertaining to this Agreement (the "Provider Agreement Administrator"). Provider shall make no change in its Provider Agreement Administrator except (a) with the prior consent of the Trust, which consent shall not be unreasonably withheld, or (b) at the request of the Trust, in which case Provider shall use its best efforts to promptly appoint a replacement.

4.2 The Trust designates [redacted] to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the "Trust Agreement Administrator") unless and until a successor Trust Agreement Administrator is appointed by the Trust, in the Trust's sole discretion. All reports, correspondence and related submissions from the Provider shall be directed to the Trust Agreement Administrator at: [email address] and Efficiency Maine Trust, 168 Capitol Street, Suite 1, Augusta, Maine 04330-6856.

5. Other SOW-specific Terms and Conditions. [OTHER SOW-SPECIFIC TERMS AND CONDITIONS].

IN WITNESS WHEREOF, the Parties hereto have executed this SOW as of the SOW Date first above written.

**SERVICE PROVIDER NAME**

By \_\_\_\_\_

Name:  
Title:

EFFICIENCY MAINE TRUST

By \_\_\_\_\_

Name: Michael Stoddard  
Title: Executive Director