

EFFICIENCY MAINE TRUST

SERVICES AGREEMENT

Contract #: [REDACTED]

THIS AGREEMENT is made by and between Efficiency Maine Trust, an independent quasi-state agency of the State of Maine with a place of business located at 168 Capitol Street, Suite 1, Augusta, ME 04330-6856 (the "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"). The Trust and Provider are each a "Party" and collectively, the "Parties."

WHEREAS, Provider has submitted a proposal to provide services (the "Proposal") in response to the Trust's Request for Proposals [INSERT EMT RFP #] (the "RFP"); and

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, the Parties agree as follows.

1. SERVICES.

1.1 Provider will, throughout the Term, undertake, perform, provide and complete such services and deliverables as may be set forth a Statement of Work in the form 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 any additional SOWs that may be issued by the Trust from time to time during the Term. It is understood and agreed that Provider is engaged hereunder on a project basis and that no work or services may be performed in the absence of an SOW executed by the Trust. Each SOW, when executed by the Parties, shall be 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) 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. Provider acknowledges that the Trust's program budgets may increase or decrease depending on funding sources or changes in the Trust's allocation of program funds and that modifications within the scope of Services of an existing SOW may be authorized or directed by the Trust in a signed change order (a "SOW Modification Memorandum") issued by the Trust.

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 or unless renewed or extended by mutual agreement of the parties in a written document signed by each party. Provider shall complete the Services within the Term.

3. PRICE AND PAYMENT TERMS.

3.1 In consideration of the provision of Services by Provider as may be requested by the Trust pursuant to a SOW, and subject to the terms of this Agreement, the Trust will pay Provider the SOW Agreement Amount or SOW Fees as defined in and set forth in each executed SOW (or SOW Modification Memorandum issued by the Trust) for the Services expressly authorized in each such SOW.

3.2 Where the Services are provided on a time and materials basis, the fees payable for the Services shall be calculated in accordance with Provider's hourly fee rates as set forth in the executed SOW, or if no hourly fee rates are

specified in the SOW, then in accordance with the hourly fee rates set forth in Provider's Proposal, which rates in all cases include all wages, taxes, overhead, general and administrative expenses, and profit. Services shall be provided by the personnel designated in the SOW or Proposal and Provider shall not increase the hourly fee rates unless expressly agreed in writing in advance by the Trust. The Trust will reimburse Provider for reasonable and necessary direct costs and expenses, without mark-up. Provider shall exercise best efforts to perform and deliver the Services in the most efficient and cost effective manner, assigning only that level of staffing as is reasonably necessary to perform the particular task(s) at issue. Provider agrees to implement reasonable cost control measures so as to enable the full performance of Services as specified in an SOW within the Trust's specified not to exceed SOW Fee. Provider shall issue invoices to the Trust monthly in arrears for its fees for the immediately preceding month, together with a detailed breakdown of allowable expenses for such month incurred in accordance with this Agreement. The total payments to Provider for Services specified in an executed SOW shall not exceed the SOW Fee set forth in the SOW unless expressly authorized in advance by the Trust through a written SOW Modification Memorandum.

The parties agree that after the initial 24 months of the Term, for Services provided on a time and materials basis, Provider may increase its standard hourly fee rates specified in the applicable SOW upon written notice to the Trust; provided, that:

- (i) Provider provides the Trust written notice of such increase at least 90 days prior to the effective date of such increase;
- (ii) such increases occur no more frequently than once per contract year; and
- (iii) the amount of such increase shall not exceed the lesser of:
 - (a) the percentage rate of increase for the immediately preceding 12-month period in the Consumer Price Index, All Urban Consumers, United States, All Items (1982 - 1984 = 100), as published by the Bureau of Labor Statistics of the United States Department of Labor or, if such index is not available, such other index as the parties may agree most closely resembles such index; or
 - (b) three percent (3%).

3.3 Where Services are provided for a fixed price, the total fee for the Services shall be the amount set forth in the applicable SOW as the SOW Agreement Amount. The SOW Agreement Amount includes payment for all Services and materials and includes all Provider administrative and operating expenses with respect to the Services. The SOW Agreement Amount shall be paid to Provider upon completion and delivery of all required Services under an executed SOW and presentation of a final invoice by Provider.

3.4 Notwithstanding Section 3.3 of this Agreement, for certain Services to be performed at a fixed price, the Trust may require that an SOW provide for periodic payment of the SOW Agreement Amount in installments upon achievement of agreed upon milestones by specifying such method in an SOW. In such case, the SOW Agreement Amount shall be paid to Provider in installments, with each installment being conditioned on Provider achieving the corresponding milestone as set forth in the SOW ("Project Milestone"). On achieving a Project Milestone in respect of which an installment is due, Provider shall issue an invoice to the Trust for the amounts that are then payable. The Trust may require that Provider produce documentation or other evidence of satisfaction of each Project Milestone as a condition of payment. The total payments to Provider for Services specified in an executed SOW shall not exceed the SOW Agreement Amount in the SOW unless expressly authorized in advance by the Trust through a written SOW Modification Memorandum.

3.5 Provider invoices must be submitted on Trust approved forms and must contain sufficient detail to allow proper cost allocation. Invoices must be accompanied by supporting documentation for all charges and costs. In lieu of mailing, invoices and supporting documentation may be submitted via electronic mail to accountspayable@efficiencymaine.com, with a copy to the Trust's designated Agreement Administrator. Invoices require the following:

- (a). All invoices must include the Services Agreement number.
- (b). All invoices must include Provider's name and Federal Tax ID Number.
- (c). For a time and materials contract, all invoices must include a breakdown of work performed and expenses incurred during the invoice period and indicate the personnel who performed the services, the date of service, the nature of the work, the duration of the work, the rate charged therefor, and the cost of materials.

3.6 By submitting any invoice or request for reimbursement, Provider is representing that the Services or costs identified in the invoice or request for reimbursement have actually been performed, provided or expended, are within the scope of the executed SOW, and that such costs and expenses are allowable in accordance with this Agreement. Provider will not be paid for any time, material, expense or services outside of an SOW or in excess of the SOW Fees or SOW Agreement Amount specified in an executed SOW unless expressly agreed in writing in advance by the Trust.

4. STANDARDS OF PERFORMANCE.

4.1 Provider shall provide and perform the Services in a timely, professional, and workmanlike manner with the degree of skill, care and diligence observed by reputable national firms performing the same or similar services. 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 all other things necessary for the complete performance of the Services.

4.3 Provider shall maintain competent and adequate supervision of the Services and personnel to ensure that all work conforms to the SOW and the Agreement.

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

4.5 Provider shall, and shall ensure that its personnel and subcontractors, conform to all requirements and restrictions on the handling and use of confidential information received, learned, or provided in connection with the performance of Services and shall abide by the terms and conditions of the Efficiency Maine General Confidentiality Guidelines Memo.

4.6 Provider shall, and shall cause its personnel and subcontractors to, execute and deliver such confidentiality and non-disclosure agreements as the Trust may require.

4.7 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 and conduct periodic reviews of Provider's performance of this Agreement, including the performance of any subcontractor.

4.8 Provider shall be responsible for the professional quality, technical accuracy, and completeness of all aspects of the Services provided under this Agreement. Upon notice of Services not in compliance with this Agreement, Provider shall, at a minimum, re-perform the Services and correct or revise any errors or deficiencies in its work and other aspects of the Services as necessary, without any cost or charge to the Trust. If Provider should fail to re-perform 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 in this Agreement or by law.

4.9 Without limiting any other right or remedy of the Trust, the Trust reserves the right to conduct an annual review of Provider's performance against benchmarks, standards or criteria as may be established by the Trust and communicated in advance to the Provider. The Trust reserves the right to make any adjustments to this Agreement it deems necessary or appropriate based on the outcome of such review, including suspension or termination of any SOW or this Agreement.

5. PROVIDER REPRESENTATIONS.

5.1 Provider represents that it has all requisite power and authority to execute this Agreement and perform the Services, that the execution and delivery of this Agreement and the performance of the Services will not conflict with other obligations or restrictions on Provider, and that execution and delivery of this Agreement has been duly authorized by all necessary action of its officers, directors, partners, members, or managers as appropriate.

5.2 Provider represents that it is in good standing in the jurisdiction of its organization or incorporation, is authorized to do business in the State of Maine, and that it is not suspended, debarred or disqualified from receiving state or federal contracts, grants, or other appropriations.

5.3 Provider represents that the statements in its Proposal are accurate and that it has the business, technical, and financial capacity and capability to perform fully all Services and all of Provider's obligations in this Agreement.

5.4 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.

5.5 The foregoing constitute continuing representations of Provider throughout the Term and Provider shall advise the Trust of any circumstance that may affect the ongoing accuracy of Provider's representations. Provider shall notify the Trust of any material change in Provider's legal status, financial status, or compliance status with federal and state laws, or of any material change in the status of the Project or Services that would have a significant adverse effect on Provider's ability to implement the Project or perform the Services as described in this Agreement.

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 ten (10) calendar days' written 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 perform and be compensated only for the Services not suspended.

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 circumstances, each an "Event of Default:"

- (i) Provider's breach of any covenant, warranty, representation, condition, or obligation under this Agreement or any SOW;
- (ii) Provider's (or its employees', agents', or permitted subcontractors') violation of law;
- (iii) Provider's failure to make regular and substantial progress toward the performance and completion of the Services as required in an SOW;
- (iv) Provider's failure to provide any reporting, records, or accounting as required under this Agreement or applicable law, rule, or regulation;
- (v) Provider's insolvency, voluntary or involuntary bankruptcy, or the appointment of a receiver for Provider; or
- (vi) Any other 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) calendar 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 If the Trust terminates this Agreement for any Event of Default 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; and
- (iii) set off the full cost of completing the Services against any amounts owing by the Trust under this Agreement or otherwise and thereupon charge Provider the balance (if any), which amount is recoverable from and payable by Provider forthwith upon demand.

7.4 Notwithstanding anything to the contrary in this Agreement, the Trust may terminate this Agreement, in whole or in part, in its discretion and without penalty, for any reason, with or without cause, or for convenience, by giving thirty (30) calendar days' notice to Provider. In the event of such termination, Provider shall be paid for all satisfactory work performed to the date of termination.

7.5 Upon expiration or termination of this Agreement for any reason, Provider shall promptly turn over to the Trust and provide complete access to all data, deliverables, designs, documents, materials and other property of any kind (whether tangible or intangible) relating to or intended to form part of Services.

7.6 The Trust reserves all rights and remedies available at law or in equity in the event of a breach of this Agreement by Provider. 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, exclusive of its conflicts of law rules. Any legal proceeding instituted by the Trust or Provider regarding this Agreement shall be brought in a state or federal court located in Portland or Augusta, Maine.

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, together with Riders A and B and any other documents expressly incorporated herein by reference, constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms and provisions of this Agreement and those of any Rider or Statement of Work, the following order of precedence shall govern: (a) first, this Agreement, exclusive of any Rider, schedule or exhibit; (b) second, the applicable Statement of Work; (c) third, Rider B (General Terms and Conditions) and any other exhibits or schedules to this Agreement; (d) fourth, the RFP; and, (e) fifth, the Provider's Proposal.

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

Name:
Title:
Address: Efficiency Maine Trust
168 Capitol Street, Suite 1, Augusta, Maine 04330-6856

This individual is designated as the Agreement Administrator on behalf of the Trust for this Agreement, except if specified otherwise in an SOW 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 and has authority to curtail services if necessary to ensure proper execution and compliance, to determine when payments under the Agreement are due and the amounts to be paid, and shall make decisions on all claims of the Provider, subject to the approval of the Executive Director of the Trust.

8.5 Notice required under this Agreement shall be provided to the receiving Party in writing at the address for such Party as set forth in the preamble to this Agreement, unless the receiving Party has previously given written notice of a change of address. All properly addressed 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.

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

IN WITNESS WHEREOF, and intending to be bound, the Trust and Provider, by their authorized representatives, have executed this Agreement on the dates indicated below

EFFICIENCY MAINE TRUST

By: _____
Michael D. Stoddard, Executive Director

Date: _____

[PROVIDER]

By: _____
Name and Title

Date: _____

RIDER A
EFFICIENCY MAINE TRUST
STATEMENT OF WORK

Provider: _____

SOW #: _____

Date: _____

Contract #: _____

The following Statement of Work (SOW) is incorporated into and made part of the Services Agreement between Efficiency Maine Trust and Provider. The performance of Services under this SOW is governed by and subject to the terms and conditions of the Services Agreement and Provider reaffirms its covenants, commitments and representations contained in the Services Agreement.

Provider agrees to perform the following Services in accordance with the terms and conditions of this SOW and the Services Agreement:

1. Services; Work Product and Deliverables: **[INSERT SPECIFIC SERVICES, WORK PRODUCT AND DELIVERABLES TO BE PERFORMED OR PROVIDED BY THE PROVIDER]**

2. Time Period for Performance/Delivery of Services: **[INSERT TIME PERIOD(S) FOR REQUIRED PERFORMANCE/DUE DATE(S) OR DELIVERY DATE(S)]**

3. Services will be provided and compensated on the following basis in accordance with the terms and conditions of the Services Agreement: **[CHOOSE TYPE OF CONTRACT; STRIKE THE INAPPLICABLE PARAGRAPH(S)]**

[TIME AND MATERIALS – NOT TO EXCEED:] SOW Fees (Not to exceed): \$ _____.

Services will be provided by the following Provider personnel at the following rates:
[INSERT PERSONNEL AND HOURLY RATES]

[OR]

[FIXED PRICE:] SOW Agreement Amount: \$ _____.

[If this line is initialed by the Trust, payment of the SOW Agreement Amount shall be made in installments pursuant to the Project Milestone schedule set forth below: _____]

[DELETE OR INSERT MILESTONES/PAYMENT SCHEDULE/PAYMENT PERCENTAGES]

IN WITNESS WHEREOF, and intending to be bound, the Trust and Provider, by their authorized representatives, have executed this Statement of Work as of the date set forth below.

EFFICIENCY MAINE TRUST

By: _____

Michael D. Stoddard, Executive Director

Date: _____

[PROVIDER]

By:

Name and Title

Date: _____

RIDER B**GENERAL TERMS AND CONDITIONS**

1. **INDEPENDENT CONTRACTOR.** Provider is an independent contractor with respect to any and all work or services performed under this Agreement. It is the express understanding and intention of the Parties that no relationship of master and servant or principal and agent shall exist between the Trust and the employees, agents, or representatives of Provider. Provider shall be solely responsible for the performance and conduct of its employees and agents. Provider is solely responsible to pay all taxes and fees levied or assessed incident to Provider's performance of this Agreement and Provider is solely responsible to pay all fees, wages, payroll taxes, and statutory benefits for Provider's employees and agents.
2. **CHANGES IN THE WORK.** The Trust may order changes in the scope of work. Any substantive change in the scope of work shall be in the form of an amendment, signed by both Parties and approved by the Executive Director of the Trust.
3. **PROVIDER PERSONNEL.** The Parties recognize that the primary value of the Provider to the Trust derives directly from the Provider's 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 Provider's Proposal. Therefore, the Parties agree that said Key Personnel shall be assigned in accordance with the Provider's Proposal, and that no re-deployment or replacement of any Key Personnel may be made without the prior written consent of the Agreement Administrator, which consent shall not be unreasonably withheld. 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. The Trust reserves the right to require the Provider to reassign or otherwise remove any of its employees, agents, or subcontractors found unacceptable by the Trust. 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. 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; NONDISCRIMINATION.** During the performance of this Agreement, Provider shall abide by all applicable federal, state, and local equal employment opportunity and nondiscrimination statutes, regulations, and orders including, without limitation, the Maine Human Rights Act. To the extent applicable, the provisions of 5 MRSA §784(2) are incorporated herein by reference and Provider shall cause the such provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor.
6. **TRUST EMPLOYEES NOT TO BENEFIT.** No individual employed by the Trust 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 therefrom directly or indirectly that would constitute a conflict of interest in violation of applicable law. Provider shall not engage on a full-time, part-time or other basis during the Term of this Agreement any person in the employ of the Trust in a position that would constitute a conflict of interest in violation of applicable law. Provider shall refer any potential issue regarding conflict of interest in employment or financial benefit to the Agreement Administrator for determination by the Executive Director of the Trust or referral by the Executive Director of the Trust to the Attorney General or independent counsel for opinion. 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. RECORD RETENTION AND INSPECTION; SITE VISITS. Provider shall retain during the Term of this Agreement and for the three (3)-year period following the termination or expiration of this Agreement all records (including invoices, receipts, timesheets, and payment records) in whatever form, that pertain to the work performed under this Agreement. Provider shall make such materials available at all reasonable times during the Term of this Agreement for the specified retention period. The Trust's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems.
8. PUBLIC RECORDS. Provider hereby acknowledges and agrees that all records, other than proprietary information, relating to work performed under the Agreement may be deemed 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.
9. COMPLIANCE WITH LAWS. Provider shall comply with all applicable laws, rules, regulations and ordinances in the performance of this Agreement. Provider is responsible to obtain and maintain all permits, licenses, and other approvals as may be required under applicable laws for the performance of any work or services under this Agreement.
10. TRUST HELD HARMLESS. Provider agrees to indemnify, defend and save harmless the Trust and its trustees, officers, directors, employees, agents, and assigns from and against any and all demands, suits, actions, claims, costs, fees, expenses (including attorney fees and legal expenses and the costs of enforcing any right to indemnification under this Agreement), injuries, liabilities, penalties, losses and damages of every kind and description resulting from or arising out of (i) bodily injury, personal injury, death, or property damage to the extent caused in whole or in part by the act or omission of Provider or its employees, agents, or subcontractors; (ii) claims of any subcontractor, employee or any other person or entity providing work, services, materials, equipment or supplies to or through Provider in connection with this Agreement; (iii) violation or infringement of any privacy right, proprietary right, copyright, trademark, or other third-party right arising out of publication, translation, development, reproduction, delivery, or disposition of any data, deliverable, information or other matter furnished or used by Provider in connection with this Agreement; (iv) Provider's or its agent's violation of law or breach of this Agreement; and (v) claims of any person who may be otherwise injured or damaged in the course of Provider's performance of this Agreement, including Provider's employees, agents, and subcontractors. 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. This indemnification does not apply to the extent a claim results solely and directly from the Trust's gross negligence or unlawful act.
11. INSURANCE. Unless otherwise agreed by the Trust in writing, Provider shall obtain and keep in force commercial general liability insurance, automobile liability insurance, workers' compensation insurance, and professional liability insurance issued by a company or companies fully licensed to do business in the State of Maine, which policies include coverage for the work, services, and activities to be performed by Provider under this Agreement. Such policies shall comply with the following minimum requirements:

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

- (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 per occurrence; and
- (iv) Automobile liability: \$1,000,000 per occurrence.

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

- (i) Provider's commercial general liability policies shall name the Trust as an additional insured. 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 endorsements confirming all 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.
12. APPROVAL. This Agreement must have the approval of the Executive Director of the Trust before it can be considered a valid, enforceable document.
 13. 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 re-allocated, if the Trust does not receive or loses legal authority to expend funds necessary for this Agreement, or if there is a restriction on use or disbursement funds allocated to this Agreement, then the Trust is not obligated to continue performance or make further payments under this Agreement.
 14. 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 as may be necessary to reinstate performance and compliance with the terms of this Agreement.
 15. 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.
 16. SET-OFF RIGHTS. Without limiting any other right or remedy, the Trust 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 between the Provider and the Trust, including any Agreement for a term commencing prior to the term of this Agreement.
 17. LIMITATION OF LIABILITY. 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. In no event shall the Trust be liable or responsible for any indirect, incidental, consequential, or exemplary damages of any kind.
 18. 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.
 19. 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 public 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. In conformance with applicable Federal and State statutes, regulations, and ethical standards, the 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. In the event Provider learns of a breach of this confidentiality provision, the Provider shall notify the Agreement Administrator immediately and shall take steps to remedy the disclosure. Without limiting Provider's obligations under any other statute, rule, regulation or standard, 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 General Confidentiality Guidelines Memo appended to the Efficiency Maine 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 the 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.

The Trust shall have the right, upon reasonable notice to the Provider, to audit, review, and inspect the Provider's records and procedures for compliance with these confidentiality provisions.

20. INTELLECTUAL PROPERTY. The Provider certifies that all services, works, deliverables, equipment, software, supplies, and any other products or 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. 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. In the event that any work or material supplied by Provider is subject to pre-existing intellectual property rights of a third party that may limit the rights of the Trust to use such work or material, Provider shall notify the Trust in advance of using such third-party materials and shall fully disclose the nature of any limitation. Provider shall secure all such third-party licenses and authorizations as necessary for the Trust to use the work or materials supplied by Provider under this Agreement.

21. OWNERSHIP OF DATA AND MATERIALS. Provider shall deliver all work, services, and materials free of all liens and encumbrances. Except as set forth below, 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, display, publish, execute, reproduce, distribute, transmit, and modify all such deliverables, works and materials for any purpose whatsoever. The Provider shall, upon request of the Trust whether during or after the Term of this Agreement, furnish all information, data, works and materials prepared by Provider under this Agreement.

Notwithstanding anything to the contrary, Provider and its licensors are, and shall remain, the sole and exclusive owners of all right, title and interest in and to all documents, works, data, know-how, methodologies, and materials provided or used by Provider in connection with performing work or services under this Agreement in each case to the extent developed or acquired by Provider prior to the commencement of this Agreement (the "Pre-Existing Materials"), including all intellectual property rights therein. Provider hereby grants the Trust an irrevocable, perpetual, fully paid-up, royalty-free, non-exclusive license to use, display, publish, execute, reproduce, distribute, transmit, and modify any Pre-Existing Materials to the extent incorporated in, combined with or otherwise necessary for the use of the deliverables, work, or services of Provider under this Agreement and for any and all other lawful purposes. All other rights in and to the Pre-Existing Materials are expressly reserved by Provider.

22. PUBLIC FUNDS. Provider understands that funding for this Project may be derived from designated public funds. All requirements, restrictions and obligations regarding the use of public 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 public 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. If Provider fails to comply with applicable terms and conditions governing the use of public 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 laws.

23. EFFICIENCY MAINE LOGO. The “Efficiency Maine” name and logo are registered trademarks of Efficiency Maine Trust. Provider may use the Efficiency Maine logo in connection with the Project only upon the written consent or direction of the Trust. Any such use must be in strict accordance with the Trust’s design, image, and placement standards and any such consent to use is revocable by the Trust.
24. SURVIVAL. All provisions relating to document retention, audit, accounting, reporting, confidentiality, indemnity and remedies, and any other 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.