

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 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.

1.3 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 specifically authorizing such work or services and detailing the scope, staffing, deliverables, budget, and timing of the specific project

1.4 The Trust may at any time request changes or modifications to any SOW by making a written request to Provider specifying in detail the desired changes or modifications. Within five (5) days of Provider's receipt of the Trust's request, Provider will submit to the Trust a change order that will detail the cost related to Provider's implementation of such changes and modifications, as well as a written description of any affect(s) that such changes or modifications may have on performance periods. If Provider's proposal is acceptable to the Trust, the parties will execute the change order and the requested changes and/or modifications will be deemed incorporated into the applicable SOW and shall be performed pursuant to the terms and conditions of this Agreement.

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. All provisions relating to document retention and review, audit, accounting, reporting, warranties, confidentiality, indemnity and remedies shall survive expiration or termination of this Agreement.

3. PRICE AND PAYMENT TERMS.

3.1 In consideration of the provision of the 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 Agreement Amount or Fees set forth in each SOW 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 fee rates for the Provider Personnel set forth in the applicable SOW and Provider shall issue invoices to the Trust monthly in arrears for its fees for time for the immediately preceding month, together with a detailed breakdown of allowable expenses for such month incurred in accordance with this Agreement.

The parties agree that after the initial 12 months of the Term, for Services provided on a time and materials basis, Provider may increase its standard 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 of the Term; 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 Agreement Amount, the total fees for the Services shall be the amount set out in the applicable SOW. The total Agreement Amount shall be paid to Provider in installments, as set out in the SOW, with each installment being conditional on Provider achieving the corresponding Project Milestone. On achieving a Project Milestone in respect of which an installment is due, Provider shall issue invoices to the Trust for the fees that are then payable, together with a detailed breakdown of allowable expenses incurred in accordance with this Agreement.

3.4 The Agreement Amount or Fees shall be payable in accordance with the Price and Payment Terms set forth in each SOW for the Services expressly authorized in each such SOW. The Trust's obligation 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 pursuant to an SOW issued and executed by the Trust;
- (v) The Services are performed fully in accordance with the SOW and this Agreement.

3.5 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.

3.6 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.

3.7 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 SOW, and that such costs and expenses are allowable, allocable, and reasonable in accordance with this Agreement and all applicable laws, rules, regulations, and policies.

3.8 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 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 services as necessary for the performance of the Services. Provider shall provide and maintain competent and adequate supervision of the Services and personnel to ensure that all work conforms to the SOW and the Agreement.

4.3 Provider shall develop and maintain a project schedule as necessary to ensure completion within the Term of this Agreement and any agreed project timeline, as may be adjusted by the Parties in writing from time to time. Timely performance of the Project is an essential condition of this Agreement.

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

4.5 Provider shall abide by the terms and conditions of this Agreement, including all terms and conditions set forth in Riders appended hereto, which are expressly incorporated in and made part of this Agreement.

4.6 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.

4.7 Provider shall be responsible for the professional quality, technical accuracy, completeness and coordination of all aspects of the Services 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 work 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 in this Agreement or by law.

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 shareholders, directors, partners, members, or managers as appropriate.

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

5.3 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 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.

5.4 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 obligations of 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) 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 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, warranty, representation, condition, or obligation under this Agreement;
- (ii) Provider's (or its employees', agents', or contractors') 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 SOW;
- (iv) Provider's failure to provide any periodic or final reporting, records, or accounting as required under this Agreement or applicable law, rule, or regulation; or
- (v) 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) 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 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 against any amounts owing by the Trust under this Agreement or otherwise under any other dealings between Provider and the Trust, and thereupon charge Provider the balance (if any), which amount is recoverable from and payable by Provider forthwith upon demand.

7.4 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 or Fees 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.

7.5 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) days' notice to Provider. Without limiting the foregoing, the Trust may terminate this Agreement 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 or federal government reduces 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 project or program conditions, 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 Trust or the State. In the event of such termination, Provider shall be paid for all satisfactory work performed to the date of termination.

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. The terms of this Agreement may only be amended in writing signed by the parties. 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

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

Name:
 Title:
 Address: Efficiency Maine Trust
 151 Capitol Street, Suite 1, Augusta, Maine 04330-6262

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 determine 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

[PROVIDER]

By:

Name and Title

RIDER A

STATEMENT OF WORK AND PAYMENT TERMS

Contract Number: [REDACTED]

Agreement Documents; Interpretation.

The following documents constitute the Agreement documents and together constitute the Agreement:

1. Efficiency Maine Trust Services Agreement;
2. Rider A, Statement of Work; Price and Payment Terms;
3. Rider B, General Terms and Conditions;
4. Efficiency Maine Trust Request for Proposals RFP EM-[REDACTED]-[REDACTED] ("RFP EM-[REDACTED]-[REDACTED]"); and
5. Provider's Proposal dated [REDACTED], [REDACTED] ("Proposal").

In the event of any conflict among the provisions of the Agreement documents, the conflict shall be resolved by giving precedence to the documents in the order listed above with 1 having the highest precedence and 6 the lowest.

Statement of Work

Provider shall provide and perform the scope of work as set forth in each SOW as may be executed by the Parties in the form attached hereto. The Trust may at any time request changes or modifications to the SOW by making a written request to Provider specifying in detail the desired changes or modifications. Within five (5) days of Provider's receipt of the Trust's request, Provider will submit to the Trust a change order that will detail the cost increase or reduction related to Provider's implementation of such changes and modifications, as well as a written description of any affect(s) that such changes or modifications may have on performance periods. If Provider's proposal is acceptable to the Trust, the parties will execute the change order and the requested changes and/or modifications will be deemed incorporated into the SOW and shall be performed pursuant to the terms and conditions of this Agreement. No services may be performed, and no services or related expenses will be compensated, beyond those expressly authorized in an SOW executed by the Trust.

All work and materials are subject to review and approval by the Trust.

PAYMENT TERMS

[CHOOSE TYPE OF CONTRACT]

[FIXED PRICE] Agreement Amount: \$[REDACTED]. The Agreement Amount includes payment for all Services and includes all taxes of any kind imposed with respect to the Services. The Agreement Amount shall be paid to Provider in installments, with each installment being conditional on Provider achieving the corresponding Project Milestone as set forth in the SOW. **[INSERT MILESTONES/PAYMENT SCHEDULE OR INCORPORATE IN ATTECHED SOW]** On achieving a Project Milestone in respect of which an installment is due, Provider shall issue invoices to the Trust for the amounts that are then payable, together with a detailed breakdown of allowable expenses incurred in accordance with this Agreement. The total payments to Provider shall not exceed the Agreement Amount unless expressly authorized in advance by the Trust through a written amendment or change order.

[TIME AND MATERIALS] In consideration of Provider's performance of all Services under the SOW, the Trust agrees to compensate Provider on a time and materials basis at rates not to exceed those set forth in Provider's Proposal (which rates include all wages, taxes, overhead, general and administrative expenses, and profit). Services shall be provided by the personnel designated in the Proposal and Provider shall not increase the budgeted hours, hourly rates, or costs set forth in the Proposal unless expressly agreed in writing in advance by Provider and Trust. The Trust will reimburse Provider for reasonable direct costs and expenses, without mark-up. Provider shall exercise best efforts to perform and deliver the Services in the most timely 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 Agreement Amount specified therein. Provider shall prepare and submit such periodic budgets and reports as the Trust may request.

Provider shall submit invoices for the Services on a monthly basis, for a service period from the first of the month through the end of the month, unless otherwise agreed in writing by the Provider and the Trust. Provider will not be paid for any time, material, or services outside of the SOW or above the Agreement Amount, unless expressly agreed in writing in advance by Provider and Trust. Provider will not be paid for any time, material, or expense that is contrary to the provisions of the Agreement.

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

- (a). All invoices must include the Contract number and any specific vendor number as may have been assigned to Provider by the Trust.
- (b). All invoices must include the vendor's Federal ID Number.
- (c). 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, and the rate charged therefor.

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, which documentation is subject to review and audit by the Trust. Provider shall be solely responsible for all tax reporting and tax payments arising or resulting from the payments made under the Agreement.

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EFFICIENCY MAINE TRUST



STATEMENT OF WORK

The following Statement of Work (SOW) is incorporated into and made part of the Services Agreement between Efficiency Maine Trust and _____ ("Provider") dated on or about _____, _____.

[INSERT SPECIFIC SERVICES AND DELIVERABLES]

[INSERT FIXED PRICE OR BUDGET/NOT TO EXCEED AMOUNT FOR SERVICES UNDER THIS SOW]

[INSERT PERFORMANCE GUARANTEES, IF ANY]

EFFICIENCY MAINE TRUST

By:

Michael D. Stoddard, Executive Director

[PROVIDER]

By:

Name and Title

RIDER B**GENERAL TERMS AND CONDITIONS**

1. **INDEPENDENT CAPACITY.** In the performance of this Agreement, the parties hereto acknowledge that Provider is and shall act in the capacity of an independent contractor and not as an agent or employee of the Trust. The Trust shall have no contractual relationship with, nor responsibility for, Provider's subcontractors, agents, or employees. Provider shall be solely responsible for any obligations owed to its subcontractors, agents, and employees and shall be solely responsible for the performance and conduct of its subcontractors, agents, and employees. Provider shall comply with all wage and hour and employment practices laws and 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.
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 Executive 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 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 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. 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 or subcontractors found unacceptable by the Trust. 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. 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, Recipient 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 and the Federal Civil 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. The Trust may withhold payments to any Recipient found to be in violation of the Maine Human Rights Act or the Federal Civil Rights Act.
6. **TRUST EMPLOYEES NOT TO BENEFIT; EMPLOYMENT AND PERSONNEL.** 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. 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.
8. 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.
9. 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, in whatever form, that 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 for the period specified retention period. If any litigation, claim or audit is started before the expiration of the 3-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 (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.
10. ACCESS TO PUBLIC RECORDS. As a condition of accepting any public funds under this Agreement, 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.
11. GOVERNMENTAL REQUIREMENTS. Provider represents and warrants that it has and will comply with all governmental 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 federal, state, or local laws for the performance of any work or services under this Agreement.
12. 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) 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 contractors; (ii) claims of any contractor, subcontractor, materialman, laborer, employee or any other person, firm, corporation 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, use, or disposition of any data, information or other matter furnished or used by Provider in connection with this Agreement; (iv) Provider's or its agent's or contractor's violation of law or breach of this Agreement; and (v) claims of any person who may be otherwise injured or damaged in the performance of this Agreement, including Provider's employees, agents, and contractors. 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.

13. NOTICE OF CLAIMS. Provider shall give the Agreement Administrator prompt notice of any claim threatened or made against the Provider or any subcontractor related in any way to this Agreement which may result in litigation or which may affect the performance of this Agreement.
14. INSURANCE. 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 and automobile 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 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.

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. 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, if the Trust does not receive legal authority to expend funds, or if there is a restriction on use or disbursement of

state or federal funds allocated to this Agreement, then the Trust is not obligated to continue performance or make further payments under this Agreement.

17. 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.
18. 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.
19. 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.
20. LIMITATION OF LIABILITY. The Trust shall be accorded all limitations and immunities from liability as permitted under applicable law. In no event shall the Trust be liable or responsible for any indirect, incidental, consequential, or exemplary damages of any kind under this Agreement.
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. 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 as confidential information. 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 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 subcontractors, comply with the confidentiality provisions of the Efficiency Maine Trust Act, 35-A MRSA §10106.
23. 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.
24. 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, data, 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, data, works or materials produced or provided under

this Agreement are not deemed “works made for hire,” Provider shall, and does hereby, assign all right, title, and interest in such deliverables, data, 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 all such deliverables, data, works and materials. The Trust 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. The Provider shall, upon request of the Trust, 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, 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.

25. STATE-FUNDED PROJECT; ENFORCEABILITY. Provider understands that funding for this Project may be derived from designated State funds. Provider agrees to abide by all reporting and operational requirements governing the use of such funds. If Provider fails to comply with applicable terms and conditions 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 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.
26. ADDITIONAL CONTRACTING REQUIREMENTS. All requirements, restrictions and obligations regarding the use of State or Trust 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 or Trust 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.
27. EFFICIENCY MAINE LOGO. Provider may use the Efficiency Maine logo in connection with the Project upon the written consent of the Trust. Any such use must be in strict accordance with the Trust’s design, image, and placement standards. The Trust reserves the right to require Provider and its subcontractors to publicly acknowledge the Trust’s funding and participation in the Project.
28. NOTICES. All notices under the Agreement shall be deemed to have been duly given and delivered: (i) upon delivery to the other party, if delivered by hand, (ii) three (3) business days following posting, if sent by registered or certified mail, return receipt requested, to the address on record for the other party, 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.