

STATE OF MAINE
DEPARTMENT OF CONSERVATION
Agreement to Purchase Services

THIS AGREEMENT, made this _____ day of _____, _____, is by and between the State of Maine, Department of Conservation, hereinafter called "Department," and L. E. Caldwell Company, located at 431 General Turner Hill Road, Turner, Maine 04282, telephone number 207-377-3956, hereinafter called "Provider", for the period of August 22, 2011 to June 30, 2012.

The Employer Identification Number of the Provider is S007622910

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and in consultation with the Department, to perform the services, study or projects described in Rider A, and under the terms of this Agreement. The following riders are hereby incorporated into this Agreement and made part of it by reference:

- Rider A - Specifications of Work to be Performed
- Rider B - Payment and Other Provisions
- Rider C – Exceptions to Rider B

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in one (1) original and three (3) copies.

DEPARTMENT OF CONSERVATION

By: _____
Name and Title, Department Representative

and

By: _____
Name and Title, Provider Representative

Total Agreement Amount: \$ 120,980

State Controller

Approved: _____
Chair, State Purchases Review Committee

RIDER A
SPECIFICATIONS OF WORK TO BE PERFORMED

A.1. FOREST INVENTORY STATISTICS REQUIREMENTS AND CRUISE POINT ALLOCATION SPECIFICATIONS

The contractor will develop the cruise line and point layout under the following requirements:

- BAF-15 prisms will be used.
- The landbase-wide sample will produce total volume within plus or minus 5% at 95% confidence interval.
- For each of the Bureau's three regions, total volume will be within plus or minus 5% at 90% confidence interval.
- For each of the Bureau's 13 sustainable harvest units, NOT including W5, total volume will be within plus or minus 10% at 90% confidence interval.
- All BPL contiguous tracts holding greater than 1,500 regulated acres will be sampled.
- Parcels with fewer than 1,500 regulated acres will be sampled proportionately to their share of total regulated acres. Not all of these smaller tracts must be sampled, but the inventory design must include sampling of a broad distribution among such tracts, in each of the three regions.
- With the exception of Kennebec Highlands, none of the so-called Southern lots (SHU: W5) are to be sampled.
- Points will be evenly distributed in each SHU across all size class 2 and 3 types unless a different point distribution is approved in writing by the contract administrator.
- Point layout must result in at least 3% and no more than 6% of all points being located in seedling-sapling stands, the Bureau's size class 1 designation as shown on Bureau timber type maps prior to the beginning of field work.
- All cruise line starting points will be located randomly with no bias as to their location. If an acceptable layout employs clusters of short cruise lines, only the starting point of the cluster need be random.

Cruise lines - Once the starting point for the cruise line has been located, the direction of travel taken on that cruise line is to be a randomly chosen compass direction; if contractor and the Bureau agree, the random choices may be limited to the cardinal directions. GPS data is to be taken at the beginning and end of each cruise line and at each point center. This GPS data will be used to check the accuracy of the contractor's cruisers. Prior to field work beginning, a shapefile or .TAB file of all cruise lines with points and fields that provide line number, point number, NAD 83 latitude and longitude and timber type of that point will be provided to the Bureau for evaluation. In addition, a hard copy map showing cruise lines and points will be included with this data.

Boundary Overlap/Offsets – The standard offset for points with center outside of regulated forest land is a two-chain advance in the direction of the cruise line; this two chains to be deducted from the distance to the next succeeding point on the line. The proposal must include the method proposed for boundary overlap, when the distance from point center to a boundary is less than the limiting distance to typical-size trees. Boundaries include actual ownership boundaries, boundaries of mapped nonforest areas including roads with mapped polygons, and boundaries of mapped unregulated forest acres. Points landing on/near an apparent boundary between two different stand types require no offset; the field crew will assign a timber type according to the preponderant type visible from point center. Points landing on/near roads, typically winter roads, which have no

mapped polygon require no offset. Any points measured/located subject to overlap or offset must have that fact recorded in the field notes.

A.2. FOREST INVENTORY FIELD DATA SPECIFICATIONS

These specifications are prepared as standards for taking plots for inventory of the forest resources on the Public Reserved Lands. Their purpose is to inform the contractor of required procedures and the type of information needed to satisfactorily complete each plot and to produce useable data. Adherence to these standards will insure that all work completed is done in a professional manner and produces acceptable data.

Equipment - The following is a list of equipment that is required to be used on the inventory and is to be supplied by the contractor.

1. BAF 15 factor prism
2. Diameter tape or tree caliper. All diameter measurements must be taken using the same type of equipment, not some with diameter tape and some with caliper.
3. Hip-Chain or measuring device/system to ensure consistent point spacing.
4. Clinometer, Abney Level, or accurate height measuring device.
5. 75-foot loggers tape or equivalent

Cruise line starting points - All starting points will be located by the contractor on maps and or aerial photography of the area to be cruised. Two GPS control points on each line are required. The preferred locations of these points are at each end of the line or at a turning point. These points can be taken by any GPS unit for which there is computer software available which will permit the importation of these points into MapInfo. In addition, a waypoint is to be taken at every point center. If satellite coverage is unavailable then this requirement is waved for that period of time, but field crews must report that unavailability in the field notes. If this situation becomes a persistent problem, then it will be the responsibility of the contractor to contact the Contract Administrator for resolution.

Point Location - Points on a given line will be located at regular intervals, the distance to be agreed on between contractor and Bureau. All distances on the ground will be measured using a hip-chain, tape or other accurate measuring device. Point center will be established using a stick with flagging tied to it, pushed into the ground at point center. The point center will be labeled with the point number, cruise line number and the cruiser's initials. An additional piece of flagging will be hung from the nearest branch to point center so that it is visible from a distance of fifty feet.

Point Data - Point data will be taken as per the instructions in A.3. A BAF 15 prism will be used to indicate which trees are to be tallied. All trees in the 1" diameter class (0.51" to 1.50") and larger, dead and alive, are to be tallied. At each point the total height and the merchantable height of at least one tree is to be measured. This measurement will be used to calibrate the cruiser's eye to enter the tree height measurements needed for each tally tree at each point. The diameter of each tallied tree is to be measured at DBH to the nearest one inch class; a diameter class is from (X).51 to (X+1).50, inclusive. All trees which are borderline will require that the

distance from point center to the center of the tree be measured to determine if the tree is to be tallied. The distance in feet of a border line tree must be equal or less than the diameter of the tree, in inches to the nearest one tenth inch, at DBH multiplied by 2.245.

Site data - At each point site data will be recorded as per the instructions in A.3.

Tree data - At each point tree data will be recorded as per the instructions in A.3.

Field maps - A field map showing the cruise lines is to be provided to each cruiser by the contractor. It is required that all recommended changes to timber types or type lines; any offsets made; or any comments that the timber cruiser wishes to make, be marked in red pencil on these maps. These maps must be submitted with the electronic cruise data.

A.3. DATA COLLECTED AT EACH POINT

Site Data:

--Timber type: Field crew will record the timber type based on what is in view from point center. Timber types recorded must conform to the system in use on the Bureau GIS type maps, as shown below.

Broad Forest Types:

S: Over 66% is softwood species.

H: Over 66% is hardwood species.

M: Neither softwood nor hardwood make up over 66% of species.

Timber type:

First Character

- C: A softwood stand in which 50% or more of stand composition is cedar.
- P: A softwood stand in which 50% or more of stand composition is pines.
- S: A softwood stand (broad forest type) which does not meet the standards for C or P.
- M: Same standard as for the broad forest type.
- O: A hardwood stand in which 50% or more of stand composition is oaks.
- IH: A hardwood stand in which 50% or more of stand composition is intolerant hardwood species.
- TH: A hardwood stand with insufficient intolerant hardwood species to be labeled as IH.

Second Character

1: Stems primarily in the 4" diameter class or smaller.

2: Stems primarily in diameter classes of 5-10".

3: Stems primarily in diameter classes larger than 10".

Third Character

A - Crown closure 85-100%

B - Crown closure 67-85%

C - Crown closure 33-66%

D - Crown closure under 33%

Tree Data – Trees in the 1” diameter class and larger:

--If compatible with contractor software, tree species should be recorded using the following two-letter code:

HARDWOODS

AS Aspen
 BP Balsam poplar
 BA Brown ash
 BE Beech
 BC Black cherry
 BW Basswood
 GB Gray birch
 HH Hophornbeam
 PB Paper/white birch
 RM Red maple
 RO Red oak
 SM Sugar maple
 YB Yellow birch
 OH Other hardwood
 DH Dead hardwood

SOFTWOODS

BF Balsam fir
 BS Black spruce
 CE Cedar
 HE Hemlock
 JP Jack pine
 RP Red/Norway pine
 RS Red spruce
 TA Tamarack/Larch
 WP White pine
 WS White spruce
 OS Other softwood
 DS Dead softwood

Only those dead trees at least 4.5 feet tall will be tallied.

--Tree heights should be recorded up to a merchantable size equal to the 4-inch diameter class, except that contractor may choose to record all products using segments no longer than eight feet, in which case the top end of the topmost segment is sufficient even if larger than the 4-inch class.

--All proposals must include a product code that accounts for sawlogs, hardwood veneer, and pulpwood, for each tallied live tree that is large enough to meet at least pulpwood status.

--Each tree must be evaluated for soundness, using a code provided by the contractor, or the following code currently in use by the Bureau:

- 0 – Less than 50% sound, a cull tree
- 7 – Between 50% and 80% sound, to be calculated at 70% sound wood.
- No code letter – Over 80% sound, to be calculated at 100% sound wood.
- Trees smaller than the 4” diameter class will be tallied as either cull or fully sound.

Tree Data, Regeneration – Seedlings, trees smaller than the 1” diameter class (for the most part):

At each point, the following will be recorded:

--**Stocking level of regeneration.** This subjective decision may include trees in the 1” to 3” diameter classes, as long as these trees are clearly in a younger age class than taller/larger trees at the point.

Regeneration will be recorded in one of three categories, which should be selected without attempting to allow for harvest damage:

- Understocked (U): Insufficient stems currently present to fully stock the future stand; if none is present, record “U/none”.
- Adequate (A): Sufficient stems currently present to fully stock the future stand, without being overstocked.
- Overstocked (O): Stems currently present are sufficiently abundant that precommercial thinning would probably be desirable (for allocation of growing space, NOT for species selection.)

--**Softwood proportion of regeneration,** expressed as a percentage.

--**Average height of regeneration,** including the saplings if their inclusion is appropriate in the selection of stocking level.

--**Dominant species** among those present in the regeneration. (Top 3 in order of abundance)

Performance specifications - A point system will be utilized for the determination of acceptable performance. Each point along the cruise line will begin with a total of 100 points. Deductions will be made based on the following criteria:

Plot Location (15% of Plot)

- Starting point of line (+/- 1 chain)
- Starting and ending points of line flagged
- Flagging in between points
- Correct location of point center
- Distance between points correct
- GPS of two points along line
- Flag where line crosses road

Plot Information (15% of Plot)

- Submission of field maps
- Point center flagged and labeled
- General Information (Type)

Tree Data (70% of plot)

- Species
- DBH
- Product
- Height

To have the cruise line acceptable and to be paid for the line the contractor must have an average score of 90 for all the plots along the line. Average score will be determined by multiplying the number of plots times 100 minus the point value of any errors found and dividing the resultant number by the total number of possible points. All required information and or activities will be considered correct or incorrect with no partial points given for partially correct information or required activity.

Check cruising - The contractor will be responsible for a five percent check cruise of their own crews to insure that the terms of the contract are being met. Whenever practical, this will be done with a Bureau forester present. The decision of the acceptability of these points will be determined at that time. Should the contractor question the determination of the Bureau check cruiser then it will be the sole responsibility of the contractor to hire an independent third party to check the point in question. If the check cruiser is found to be in error then the Bureau will reimburse the contractor two and one half times the cost of hiring the third party.

Missed trees - Failure to tally, double tallying, or missing more than 5% of trees tallied is deemed unacceptable. If missed trees are discovered by the contractor's check cruisers then it is expected that the errors will be rectified. If the errors are discovered by the Bureau's check cruisers then the contractor will be penalized the value of a single inventory point.

Payment - Partial payment for services may be made before the entire project is completed. A payment of 10% of the project cost will be made once all of the point allocation and cruise line layout has been completed for the project and the required maps plus the required MapInfo data layers are submitted. Additional payments will be made when the electronic data and field maps are submitted for a fully completed parent unit up to 60% of the contract amount. The remaining amount will be paid once all of the data has been submitted and the Contract Administrator has determined that all the conditions of the contract have been met.

RIDER B
METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** \$ 120,980

2. **INVOICES AND PAYMENTS** The Department will pay the provider as follows:

Note: The \$120,980 total makes allowance for up to 300 cruise points beyond Provider's proposed total (which is 2,000 cruise points), to be added at the Contract Administrator's discretion if required to meet the Bureau's requirements for a statistically rigorous inventory. The **base amount** from Provider's proposal is \$107,480. Unless specifically noted, all payment percentages will be derived using this **base amount** as the project cost, not the larger total amount.

A payment of 10% of the project cost (\$10,748) will be made once all of the point allocation and cruise line layout has been completed for the project and the required maps plus the required MapInfo data layers are submitted. Additional payments will be made when the electronic data and field maps are submitted for a fully completed Sustainable Harvest Unit (SHU), at the rate of \$33.00 per cruise point taken within that SHU. "Fully completed" means that all cruise points contained in the point allocation and cruise line layout have been measured. These partial payments shall not exceed 60% of the **base amount**, which comes to \$64,488. Should the Contract Administrator require that cruise points over and above Provider's proposed 2,000 cruise points be needed, payment for those additional cruise points at \$45.00 per cruise point will be made when all additional cruise points have been completed. The remainder of the **base amount** will be paid once all of the data has been submitted and the Contract Administrator has determined that all conditions of the contract have been met.

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. The Department will process approved payments within 30 days.

3. **BENEFITS AND DEDUCTIONS** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

4. **INDEPENDENT CAPACITY** In the performance of this Agreement, the parties hereto agree that the Provider, and any agents and employees of the Provider shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.

5. **DEPARTMENT'S REPRESENTATIVE** The Agreement Administrator shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department 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 Commissioner of the Department.

6. **AGREEMENT ADMINISTRATOR** All progress reports, correspondence and related submissions from the Provider shall be submitted to:

Name: _____
Title: _____
Address: _____

who is designated as the Agreement Administrator on behalf of the Department for this Agreement, except where specified otherwise in this Agreement.

7. **CHANGES IN THE WORK** The Department 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, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.

8. **SUB-AGREEMENTS** Unless provided for in this Agreement, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Agreement Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Agreement must be annotated "approved" by the Agreement Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.

9. **SUBLETTING, ASSIGNMENT OR TRANSFER** The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Agreement Administrator. No subcontracts or transfer of agreement shall in any case release the Provider of its liability under this Agreement.

10. **EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Agreement, the Provider agrees as follows:

a. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

c. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.

e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.

f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.

g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. **EMPLOYMENT AND PERSONNEL** The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Contractor shall not engage on a full-time, part-time or other basis during the period of this Agreement, any other personnel who are or have been at any time during the period of this Agreement in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time or other basis during the period of this Agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

12. **STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly due to his employment by or financial interest in the Provider or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

13. **WARRANTY** The 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 the 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 Department 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.

14. **ACCESS TO RECORDS** The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested.

15. **TERMINATION** The performance of work under the Agreement may be terminated by the Department in whole, or in part, whenever for any reason the Agreement Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination, and modified accordingly.

16. **GOVERNMENTAL REQUIREMENTS** The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.

17. **GOVERNING LAW** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

18. **STATE HELD HARMLESS** The Provider agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Agreement by the Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the following: (i) claims suffered or incurred by any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as "person") providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This

indemnification does not extend to a claim that results solely and directly from (i) the Department's negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

19. **NOTICE OF CLAIMS** The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under the Agreement, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement.

20. **APPROVAL** This Agreement must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.

21. **LIABILITY INSURANCE** The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Agreement with adequate liability coverage to protect itself and the Department from suits. Providers insured through a "risk retention group" insurer prior to July 1, 1991 may continue under that arrangement. Prior to or upon execution of this Agreement, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

22. **NON-APPROPRIATION** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

23. **SEVERABILITY** The invalidity or unenforceability of any particular provision or part thereof 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.

24. **INTEGRATION** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B (except for expressed exceptions to Rider B included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

25. **FORCE MAJEURE** The Department may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that 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, or 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. The Department may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

26. **SET-OFF RIGHTS** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement up to any amounts due and owing to the State with regard to this Agreement, any other Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

27. **ENTIRE AGREEMENT** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. 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.