

GENERAL TERMS AND CONDITIONS TO SERVICE AGREEMENT

1. Definitions. As used in the Contract, the following terms, when initially capitalized, shall have the following meanings:

a. “Accept” or “Acceptance”, when used in connection with acceptance of all or any portion of the Work, means that the Owner has inspected the Work that is being accepted and has not identified any portion or feature of the same that deviates from the requirements set forth in the Contract.

b. “Agreement” means that written agreement to which these General Terms and Conditions are attached and to which these General Terms and Conditions are hereby incorporated by reference

c. “Contract” means the Service Agreement, these General Terms and Conditions, and as well as any other documents or materials that are incorporated by reference into the Agreement or these General Terms and Conditions.

d. “Contractor” means the party performing the Work as provided in the Contract.

e. “Owner” means **ecomaine**, the owner of the property or project upon which the Work (as that terms is defined below) will be performed.

f. “Work” means all of Contractor’s obligations under the Contract.

g. Articles 5, 7, 10, 12, 13, 14, 17, 20, 24, 26, 27, 30 and perhaps others of this agreement address giving notice to either the Owner and / or Contractor. Owner’s and Contractor’s points of contact are identified in the Service Agreement.

2. Priority of Contract Documents. To the extent that the Contract includes the following documents, those documents shall have the following priority in the event of a conflict between their terms: (a) any amendment to the Agreement; (b) the form of the Agreement to which these General Terms and Conditions are attached; (c) these General Terms and Conditions; and (d) any exhibit(s), schedule(s), or scope(s) of work incorporated into the Agreement. Additional or different terms contained in Contractor’s proposal or Contractor’s acceptance shall not become a part of the Agreement unless expressly agreed to in writing and signed by Owner.

3. Relationship of Parties, Contractor's Employees. Contractor is and shall be deemed to be an independent contractor with respect to the Work and the Contract. Except as may otherwise be explicitly stated in the Agreement, the Contractor shall not be, and shall not be deemed to be, an agent of the Owner with respect to the Work or the Contract. The Owner and the Contractor are not, and shall not be deemed to be, partners or joint venturers by reason of, or in connection with, the Work or the Contract. The Contractor shall have complete charge of its employees engaged in the performance of the Work, and such employees shall not be considered to be employees, servants or agents of the Owner in any respect. The Contractor shall perform the Work in accordance with its own methods in an orderly and workmanlike manner, assume supervisory responsibility for and enforce strict discipline and order among its employees, and shall not employ any unfit or unskilled person in connection with the Work. The Contractor shall supply employees, other personnel, materials and equipment sufficient to complete the Work as provided in the Contract.

4. Safety. The Contractor shall perform the Work and conduct its operations so as to provide maximum safety to its employees and others while on the Owner's premises and shall complete the Required Contractor Training and comply with the safety provisions and requirements of the Owner found on Owner's web site at <http://ecomaine.org/commercial/index.shtm>. Contractor shall perform the Work in a safe and careful manner and use such safety devices and methods as are necessary to protect its employees, agents, subcontractors, Owner's employees and agents, other contractors and the public from bodily harm and damage. Contractor shall comply with and shall cooperate in enforcing the Owner's facility and job site protections and regulations. Contractor shall have full responsibility for the conduct of all of its agents, employees, subcontractors, suppliers, and representatives and shall employ, and cause to be employed, and shall retain and permit to be retained in employment, only such employees as will be orderly and will in all respects cooperate and work in harmony with others at the Owner's premises and the job site. Contractor shall comply with, and shall cause its subcontractors and suppliers to comply with, and enforce, all laws, rules and regulations applicable to safety and health standards, including but not limited to the Occupational Safety and Health Act of 1970 (OSHA), and any revisions to OSHA or successor legislation. Contractor shall comply with, and shall enforce, all of the Owner's facility and job site safety and security rules and procedures, provided that such rules and procedures do not conflict with OSHA or other safety laws, rules and regulations. Contractor shall provide Owner with Material Safety Data Sheets to the Owner's Point of Contact, identified in the Service Agreement, for all applicable materials prior to delivery to Owner's site.

5. Compliance With Contract. The Contractor shall perform the Work as required in the Contract and shall complete all Work, and all portions of the Work, as required by the Contract. Except as otherwise explicitly provided in the Contract, the Contractor's obligations under the Contract shall include each and every act and thing needed to properly complete the Work, whether or not each

such act or thing is specifically mentioned or referenced in the Contract. Except as otherwise explicitly provided in the Contract, the Contractor's obligations under the Contract includes provision of all labor, services, materials, tools and equipment necessary to perform the Work as determined by the Owner or its agent. Contractor shall notify Owner within 24 hours of the time that Contractor first becomes aware that any provision of the Contract has not, or, in all likelihood, will not, be completed at the time and in the manner required by the Contract.

6. Assignment and Subcontracting. Contractor may not subcontract, assign, or otherwise dispose of all or any part of the Contract (except the right to receive payments), or delegate or subcontract any of its obligations under the Contract, without the prior written consent of Owner. Consent to subcontracting shall not be unreasonably withheld, conditioned or delayed. Any assignment of the Contract in violation of these provisions will be voidable at the Owner's option. Any subcontract, assignment or other disposition of all or any portion of the Contract, or any delegation or subcontracting of any of the Contractor's obligations under the Contract, even if consented to by the Owner, shall not relieve the Contractor from liability for complete and faithful performance of the Work and any other contractor obligations to the Owner. Time is of the essence in connection with the Contractor's performance of the Work and performance of its obligations under the Contract.

7. Plans and Specifications. The Contractor shall submit all plans and specifications for the Work to the Owner for its prior approval, which approval shall not be unreasonably withheld, conditioned or delayed. Approval of such plans and specifications by the Owner shall in no event excuse any failure of the Contractor to perform any of its obligations under the Contract.

8. Inspection and Acceptance. All Work shall be subject to the inspection, review, approval and Acceptance of the Owner at all times and Owner shall have free access to the Work for these purposes. Owner's inspection, review, approval, or Acceptance of the Work shall not relieve Contractor of its obligation to comply with the terms of the Agreement. Owner may reject non-conforming Work at any time and Contractor shall correct such non-conformity at Contractor's expense in accordance with any warranty provided under the terms of this Agreement or otherwise. Any part of the Work not rejected by Owner following final inspection shall be deemed Accepted. Title to the Work or any portion of the same shall pass to Owner upon the earlier of the time that such Work is incorporated into any property or premises of Owner and Acceptance of that Work. Acceptance shall not relieve Contractor of its obligation to comply with the terms of the Contract or of any liability for damages resulting from a breach of the Contract.

9. Borrowing of Tools and Equipment. If Contractor uses or borrows tools, vehicles, materials or equipment (collectively, "Tools") provided by Owner, **Contractor (a) agrees that Owner has provided the Tools AS IS, with no**

representation or warranties; (b) assumes full responsibility for the protection of the Tools; (c) assumes all liability for injuries or damages resulting from the use of the Tools; and (d) agrees to return the Tools to Owner in the same or better condition as when it was when provided to Contractor. Owner does not have an obligation to lend Tools to Contractor. Contractor agrees that Owner may obtain the return of any such Tools upon demand and that Contractor does not have, and will not have, any title or right to any such Tools or the use of the same. All such Tools shall be used by Contractor only to perform the Work.

10. Other Obligations. Contractor shall assign qualified and competent personnel to perform and supervise the Work. Key personnel shall not be removed or replaced without the prior consent of Owner, which consent shall not be unreasonably withheld, conditioned or delayed. Contractor shall cooperate with Owner and others working at or near the site of the Work. Contractor shall promptly report to Owner any known defects in the work of others which relate to or may have a materially adverse impact upon the Work, and of any other known conditions, which relate to, or may have a materially adverse impact upon, the Work. Failure to report such known defects and conditions which relate to or may have a materially adverse impact upon the Work constitutes acceptance of the same by the Contractor. Contractor shall keep all of its work areas free from trash and debris, and keep its work areas clean on a continuous basis. Contractor shall secure and protect its own materials, tools, equipment and the Work, as well as Owner provided materials and equipment. Contractor shall provide Owner with weekly progress reports as requested by Owner.

11. Taxes. The price shall include, and the Contractor shall pay, all taxes and assessments for unemployment insurance, social security and disability benefits, and other taxes which are based upon the compensation paid to persons employed by Contractor or its subcontractors for the performance of any Work. The price shall include all applicable foreign, federal, state and local taxes payable with respect to the Contract and the Work. The parties understand that the Owner is exempt from sales and use taxes imposed by the State of Maine and Owner agrees to provide the Contractor with such documentation as may be reasonably necessary to evidence that exempt status in order to avoid payment of sales and use taxes for any goods, services and other items supplied to the Owner pursuant to the terms of the Contract.

12. Changes in Work. Owner may change the scope of the Work and Contractor agrees to perform such changed scope of Work, provided that the parties first agree in a writing (a "Change Order") signed by the Owner and the Contractor as to any modifications in the price, schedule and any other terms of the Agreement that will result from any such change.

13. Payment. To the extent not otherwise set forth in the Contract: (a) Contractor shall invoice Owner, with proper documentation, for all Work performed during the prior month; and (b) Owner shall pay Contractor, upon submission of proper invoices, the price for Work performed within 30 days after

receipt of the invoice. Invoices shall not be considered proper unless accompanied by Contractor's lien releases and all other documentation reasonably required by Owner. The Contract number must appear on all invoices and notices.

Owner may withhold up to ten percent (10%) of the Total Contract Price from last payment until Contractor has demonstrated total compliance with Contract terms and specification requirements and Owner has accepted the Contractor's Work, including documentation.

14. Warranty. Contractor warrants that all Work shall be provided as required by the terms of the Contract and consistent with the standards of the profession(s) in which the Contractor and its subcontractors and suppliers are engaged. Contractor further warrants that all services provided under the terms of the Contract will be provided with due care, due diligence and in a workmanlike manner, that such services will be of high quality, complete and accurate, and that such services will be free from defects in workmanship and will comply with the terms of the Contract. Contractor also warrants that all materials will be free from defect and will comply with the terms of the Contract.

Contractor will, by repair or replacement, remedy any violation of these warranties that appear under normal and proper use and service within 12 months of the date that Owner Accepts the last portion of the Work, provided that Contractor is given written notice of claimed defects prior to the expiration of that 12 month period, and that Contractor and any necessary apparatus are given clear access to components requiring corrective action. Contractor shall perform such repairs in as expedient a manner as reasonably possible. If any such repairs or replacements are not made within the shorter of (a) 90 days after the Owner provides written notice of the same to Contractor; and (b) the time within which such repairs would ordinarily be expected to be completed under normal industry standards, then the parties agree that the limitation of Contractor's liability to repair or replacement will have failed of its essential purpose, and, in such case, Owner may obtain any other remedy available to it by law, in equity, or otherwise.

This warranty shall not apply to any materials or parts of the Work to the extent that any defects are caused by alteration or repair by others, or misuse, abuse, neglect, accident or improper maintenance. Normal wear and tear shall not, in themselves, be considered defects.

EXCEPT AS TO TITLE, AND EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN WRITING IN THE CONTRACT, THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, IMPLIED OR STATUTORY, AND INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A

PARTICULAR PURPOSE OR ANY OTHER MATTER. However, any warranty provided by the Contractor and any limitation upon the same set forth herein, does not limit or affect any separate warranty provided by others (whether directly or by way of assignment) or which otherwise applies to any items on which the Work is performed.

In addition to any warranties otherwise provided in the Contract, the Contractor hereby assigns to the Owner whatever assignable interest the Contractor may now have or may come to have in any warranty made by any manufacturer, subcontractor, supplier or other entity with respect to any goods, services or other items provided to Owner under the terms of the Contract. This assignment shall not in any way be deemed to limit, negate or otherwise affect any warranties or disclaimer of warranties set forth in the Contract (including, but not limited to, those set forth in this § 14). The Contractor shall not incur any duties arising out of any such assigned warranties or of breach of the same, but shall remain fully liable upon breach of any warranties that it has provided as set forth in the Contract.

15. Intellectual Property; Documentation.

a. Warranty. Contractor warrants that its performance, and the performance of its subcontractors and suppliers, of the Work will not infringe upon or violate any trademarks, patents, copyrights, trade secrets or other third party property (whether intellectual or otherwise) rights. If the performance of Work is held to constitute infringement or such a violation, or the use of the Work is enjoined, Contractor, at its expense, shall procure for Owner the right to continue use of the Work, or replace the Work with non-infringing materials or methods satisfactory to Owner, or modify the Work in a manner satisfactory to Owner so that the Work becomes non-infringing.

b. Indemnification. The Contractor, shall, at its own expense, defend all suits or proceedings instituted against the Owner, through counsel selected by the Contractor and reasonably acceptable to the Owner, to the extent that such suit or proceeding is based upon a claim that performance of any of the Work, or the use of any of the Work, constitutes an infringement upon or violates any patent, trademark, copyright, trade secret, or other intellectual property right. The Contractor hereby agrees to indemnify and save Owner harmless from and against all liabilities, claims, costs and damages, including, but not limited to, reasonable attorneys' fees, arising out of any violation of the warranties provided in § 15(a) of these General Terms and Conditions, or arising out of any assertion that performance of any of the Work, or the use of any of the Work, constitutes an infringement upon or violates any patent, trademark, copyright, trade secret, or other intellectual property right. If any material, equipment, document, process, apparatus, or any of the

Work, or the use of any of the same, is held or determined to constitute an infringement upon or violation of any patent, trademark, copyright, trade secret, or other intellectual property right, or the use of any of the same is enjoined, the Contractor shall, within a reasonable time, secure for the Owner, at the Contractor's own expense, the right to continue to use such material, equipment, document, process, apparatus, and Work by either obtaining the suspension or termination of the injunction, procuring for the Owner a license or other right to use the same or obtaining the right in some other manner. In the alternative, and solely at the Owner's election, the Contractor shall, at Contractor's expense and without injury or damage to any other property of the Owner: (i) replace such material, equipment, document, process, apparatus, and Work with non-infringing items of the same quality and function; or (ii) modify such items so that they become non-infringing but perform the same functions and have the same quality as they had prior to such modification.

c. Licenses. Except to the extent otherwise provided in § 15(d) of these General Terms and Conditions, the Owner shall have a permanent, assignable, nonexclusive, royalty-free license to use any concept, product or process, patentable, copyrightable, or otherwise, furnished or supplied to the Owner by or on behalf of the Contractor or its employees or subcontractors, or otherwise developed or first reduced to practice by the Contractor or its employees or subcontractors in the performance of services under this Contract. If requested, the Contractor agrees to do all things necessary (at the Owner's expense) to obtain patents or copyrights on any processes, products or writings developed or produced by the Contractor or its employees or subcontractors in the performance of the Work or of other services under this Contract to the extent that the same may be patented or copyrighted. The Contractor further agrees to execute or cause to be executed such documents as may be necessary to comply with the terms of this § 15(c).

d. Ownership of Rights. The Owner will own the Work and any intellectual property rights that are developed as part of the Work. Such Work shall be deemed "work for hire" and Contractor hereby assigns all intellectual property rights, including all trademarks, patents, and copyrights that are obtained by Contractor, or its employees or subcontractors in such Work. If requested, the Contractor agrees to do all things necessary (at the Owner's expense) to obtain patents or copyrights on any processes, products or writings developed or produced by the Contractor or its employees or subcontractors as part of the Work to the extent that the same may be patented or copyrighted. The Contractor further agrees to execute or cause to be executed such documents as may be necessary to comply with the terms of this § 15(d).

e. **Materials.** Without in any way limiting the foregoing, the Owner shall be the owner of all materials prepared or developed by the Contractor, or its employees or subcontractors in connection with, or as part of, the Work from the time that such preparation or development commences. Such materials shall include, but not be limited to, all documents, calculations, maps, sketches, notes, reports, data, models, samples, plans, and specifications prepared or developed in connection with, or as a part of, the Work. All such materials, together with all materials furnished to the Contractor, or its employees or subcontractors by the Owner, shall be delivered to the Owner by the Contractor upon Owner's request and, in any event, upon termination of the Contract.

16. Required Insurance Coverages. The Contractor shall carry and maintain, and shall cause its subcontractors to carry and maintain, at no expense to the Owner, the following insurance with respect to the Work, the job site, and any premises of the Owner upon which any of the Work is performed:

a. Comprehensive or Commercial General Liability Insurance, including, but not limited to, Operations, Product and Completed Operations (three years), Contractual Liability insuring liability assumed by the Contractor in any provision of the Contract (Broad Form Property Damage Liability), and Owner's and Contractor's Protective Liability coverage, in each case with a minimum combined single limit for bodily injury (including death), and property damage, of at least \$1,000,000 per occurrence;

b. To the extent applicable, all insurance required by the worker's compensation, employer's liability, and occupational disease or health laws, and similar laws, of the state(s) where the Work is performed and of any other state that claims jurisdiction over injuries to employees performing Work;

c. To the extent applicable, all insurance required by federal compensation statutes (including Longshoreman's and Harbor Workers' Compensation Acts and the Jones Act);

d. Comprehensive Automobile Liability Insurance, on an occurrence basis, including all owned, non-owned, and hired vehicles, with a combined single limit for limits for bodily injury, death, and property damage of not less than \$1,000,000 for each accident;

e. Professional liability insurance (errors and omissions) with a claim and aggregate limit of at least \$1,000,000 against claims arising out of the Contractor's performance of professional services, including a contractual liability endorsement insuring liability assumed by Contractor in any provision contained in the Contract; and

f. To the extent applicable, pollution liability insurance insuring Contractor's on-site operations and transportation of hazardous materials, with a combined single limit of \$1,000,000.

17. Other Insurance Requirements; Risk of Loss. Before Contractor or any of its subcontractors shall perform any of the Work, the Contractor shall furnish the Owner with a certificate or certificates evidencing that all required insurance has been obtained and is being carried. Such certificates shall stipulate that the insurance will not be cancelled or materially changed without 30 days advance written notice to the Owner and shall also specify the date on which such insurance will expire. All insurance policies required by the Contract shall include an insurer's waiver of subrogation rights in favor of Owner, and its directors, officers, employees, agents, representatives and attorneys, and such rights of subrogation will be and hereby are waived. Except for insurance provided as required in § 16(b) or § 16(c) of these General Terms and Conditions, each and every insurance policy shall be endorsed to name the Owner as an additional insured with a "cross liability" clause, and such coverage shall be primary as to any other valid and collectible insurance that may be available to Owner. All insurance shall be obtained from insurers who are authorized to do business as such within the State of Maine and who are otherwise reasonably satisfactory to the Owner. The Contractor shall have and retain risk of loss for equipment and materials that are to be delivered to the Owner as part of the Work until the Owner Accepts such equipment and materials.

18. Indemnification. Contractor shall defend, indemnify, and hold harmless Owner from and against any third party claim, demand, loss and costs, including reasonable attorney's fees, arising out of bodily injury or property damage to, or the death of, any person, including, but not limited to, any subcontractor, supplier, employee, agent, representative or invitee of Owner, Contractor, or any subcontractors or suppliers, to the extent such injury, damage or death arises out of or results in any manner from (i) Contractor's failure to comply with the terms of this Agreement, including, but not limited to, all warranties provided hereunder, or (ii) the fault of, or any act of negligence, or willful misconduct, by Contractor, Contractor's subcontractors, Contractor's suppliers, or of anyone acting under its or their direction or control, or on its or their behalf in connection with or incidental to the performance of this Agreement. Contractor's indemnity and hold harmless obligation shall not apply to liability to the extent caused by the fault, negligence or willful misconduct of Owner.

Any indemnification of Owner and any limitation of Owner's liability shall to the same extent apply to Owner's directors, officers, employees, agents, contractors, and affiliated companies, and the directors, officers, employees, agents and contractors thereof.

19. Damage Limitations. In no event shall the Contractor or the Owner be liable to the other for incidental, special, or consequential damages of any nature claimed as a result of the breach of any term of this Contract, termination of this Contract, or as the result of any warranty or infringement claim.

20. Force Majeure. Notwithstanding any other provisions contained therein, neither party shall be in breach of the Contract to the extent that any delay or default in performance is due to causes beyond the reasonable control of the delayed or defaulting party (“Force Majeure Event”), provided that the delayed or defaulting party: (a) immediately notifies the other party of the event; (b) immediately provides the other party with an estimate of the duration of the event; (c) immediately provides the other party with a plan to mitigate the effects of the delay or default; and (d) proceeds in a reasonable and continuous fashion to eliminate any further delay or default arising out of the event and to mitigate the effects of that delay or default.

21. Compliance with Laws. Contractor and its subcontractors and suppliers shall comply with all applicable laws, ordinances, rules, regulations and orders of any governmental authority, and will obtain at its expense all permits and licenses pertaining to its obligations under the Agreement. Contractor agrees to indemnify and save Owner harmless from and against any liability, fines, penalties, costs, and damages, including reasonable attorneys’ fees, to the extent caused by any failure of Contractor, its subcontractors or its suppliers to comply with this provision.

22. Confidentiality. Except as otherwise required by law or any order issued by a court or governmental entity of appropriate jurisdiction, each party agrees (a) to protect the Confidential Information of the other with at least the same degree of care used to protect its own most confidential information; (b) not to use (except for the purpose described herein), publish or disclose to third parties such Confidential Information; and (c) upon the request of the other party, to promptly deliver to the other party all written copies of such other party’s Confidential Information. “Confidential Information” shall include, but not be limited to, business plans and methods; customer information; engineering, operating and technical data; and the dates of Owner's outage schedule(s). Contractor shall not use Owner's name or logo in marketing or endorsements without the prior written consent of Owner.

Notwithstanding the foregoing, neither party shall be liable for the disclosure of any Confidential Information that: (i) is in the public domain at the time of disclosure; (ii) was in the possession of or demonstrably known by a party and free of disclosure limitation prior to its receipt from the other; (iii) is independently developed by a party without use of any Confidential Information provided by the other; or (iv) becomes known to a party from a source other than the other party without breach of the first party’s obligations under the Contract. In addition, each

party may disclose Confidential Information if such disclosure is required by law, regulation or judicial order.

23. Liens. Contractor shall not file or permit to be filed or claimed any lien with respect to the Work and hereby expressly waives any right to file or cause to be filed a lien. Contractor, in its subcontracts and in its agreements to obtain materials, equipment, supplies or services in connection with the Work, shall require all subcontractors and suppliers of materials, equipment, supplies or services to expressly waive the right to file any liens against Owner's property and, if requested, provide Owner with copies of such waivers. Contractor shall indemnify Owner for any damages, claims, costs or expenses (including, but not limited to, attorneys' fees) resulting from assertion of a lien with respect to the Work or any breach of this § 23.

24. Records. Subject to § 22 hereof, and upon reasonable prior written notice, Owner may audit records necessary to permit evaluation and verification of invoices submitted in connection with the Work performed by Contractor and of any other records related to the Work which the Owner may require in order to perform duties as required by applicable law. Contractor shall retain for a period of three (3) years following final payment all information and records relating to the Work performed under the Agreement. Owner may examine and copy such information and records at Contractor's premises during regular business hours.

25. Government Contractor Compliance.

a. Unless exempted, Contractor shall comply with the equal employment opportunity clause in Section 202 of Executive Order 11246 and all applicable rules, regulations, and relevant orders pertaining to Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and Section 4212 of the Vietnam Era Readjustment Assistance Act of 1974, as amended.

b. Contractor represents that it does not, and shall not for the term of the Contract, provide or maintain for its employees facilities that are segregated on the basis of race, color, religion, sex, sexual orientation or national origin. Contractor represents that it will not assign its employees to perform any work related to the Contract at a location where facilities are segregated on the basis of race, color, religion, sex, sexual orientation or national origin. Contractor agrees that it will not enter into any agreement to obtain goods or services relating to the Contract with any entity that provides, maintains or assigns its employees to work at locations where facilities are segregated on the basis of race, color, religion, sex, sexual orientation or national origin. As used herein, "facility" means waiting rooms; work areas; restaurants and other eating areas; time clocks; locker rooms and other storage or sleeping areas, except as necessary to assure privacy between male and female

employees; parking lots, drinking fountains; recreation or entertainment areas; and transportation.

- c. If not otherwise exempted by Title 48 and to the extent applicable, Contractor will comply with 48 CFR §52.219-8, Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns, and 48 CFR §52.219-9, Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan.
- d. If not otherwise exempted by 41 CFR §60-1.5, Contractor represents that it will file all reports or other required information specified in 41 CFR §60-1.7.
- e. During the performance of the Work, the Contractor shall comply with the provisions of the Maine Code of Fair Practices and Affirmative Action set forth in 5 M.R.S.A. § 784(2). Contractor will cause this provision to be inserted into all contracts for any Work performed so that such provisions will be binding upon each subcontractor.

26. Representations. The Contractor warrants and represents that:

- a. It shall notify the Owner of the breach of any of the material terms of the Contract (other than any breach by or on behalf of Owner), or the occurrence of any event that would permit the Owner to terminate the Contract, known to Contractor within a reasonable period not to exceed five (5) business days after the Contractor obtains actual knowledge of the same.
- b. The Contractor has the corporate power and authority to enter into, be bound by, and perform all of its obligations under the Contract. Any individual signing the Agreement and the other Contract documents on Contractor's behalf is authorized to do so.
- c. The execution, delivery and performance of the Contract by Contractor have been duly authorized by all necessary actions of the Contractor, and the Contractor's members, stockholders, directors and/or officers, and do not contravene Contractor's organizational documents or any indenture, agreement or undertaking to which the Contractor is a party or by which the Contractor is bound.

27. Notices. Each party shall designate a representative for the receipt of notices, which may be changed from time to time. All notices required to be given under the Contract shall be in writing and delivered by fax, personal delivery, e-mail or U.S. mail. Notices shall be effective upon receipt, or such later date specified in the notice.

28. Governing Law. The laws of the State of Maine shall govern the Contract. Contractor agrees that all actions and proceedings brought by Owner against Contractor may be litigated in courts located in the State of Maine or in the state where the Work was performed. Contractor further agrees that all actions and proceedings brought by Contractor against Owner shall be litigated in courts located in the Cumberland County, Maine. Contractor agrees that such courts are convenient forums and irrevocably submits to the personal jurisdiction of such courts. Contractor waives personal service of process and consents to service of process by certified or registered mail at the address designated for receiving notices under the Contract.

29. Surety Bonds. As required by Maine law (14 M.R.S.A. § 871) if applicable, prior to or at the time of execution of the Agreement, Contractor shall furnish a performance and payment bond (“Surety Bond”) for one hundred percent (100%) of the Contract price to assure faithful performance of the Work in such form as Owner may prescribe and through a surety or bonding company authorized to do business as such in the State of Maine and which is otherwise acceptable to the Owner. If provided in the Agreement or elsewhere in the Contract, the Contractor shall also furnish a warranty bond at or before the execution of the Agreement in the amount of the Contract price to assure adequate performance of the Contractor’s warranty obligations under the Contract. If Contractor is unable to qualify for any such bond within ten (10) days of the effective date of Contract award, Owner may, at its option, cancel the Contract without further liability or obligation to Contractor.

30. Termination. The Owner shall have the right to terminate the Contract by written notice to the Contractor upon the occurrence of any of the following:

- a. The Contractor’s failure to comply with the terms of the Contract or of any other contract or agreement between the Owner and the Contractor;
- b. Breach of any other term, covenant, representation, promise, warranty or condition contained in, or made by or on behalf of the Contractor in connection with the Work or the Contract, or any such representation or warranty proves to have been untrue in any material respect when made;
- c. The Contractor’s dissolution or the winding up of its affairs, its complete or partial liquidation, the suspension of all or any substantial portion of its business, the termination of its existence, its insolvency in any sense, or its failure to generally pay its debts as they become due;
- c. The appointment of, or taking possession by, a receiver, trustee, assignee, bailee, creditor or other custodian of substantially all of the property of the Contractor, if such appointment or taking is not terminated,

dismissed, vacated or released within 60 days after such appointment or taking;

d. The commencement of any kind of voluntary or involuntary bankruptcy, insolvency, or dissolution proceeding by or against the Contractor if such proceeding is not dismissed within 60 days after its filing or commencement;

e. The attachment, trustee process, lien, levy or similar action or any combination thereof against any substantial portion of the property of the Contractor, if such attachment, trustee process, lien and levy are not wholly terminated and released within 60 days after their respective occurrence; or

f. The Contractor repudiates any obligation required of it under the terms of the Contract, even if the date for performance of that obligation has not yet occurred; or

g. The Owner has reasonable grounds for insecurity with respect to the Contractor's performance of any obligation under the Contract and does not receive adequate assurance of due performance of those obligations within 10 days after the owner provides the Contractor with a written demand for such assurance.

31. Effect of Termination. Upon any termination of the Contract as provided in § 30 of these General Terms and Conditions, the Owner may exercise all rights granted to it by law or equity upon breach of the Contract. In addition, the Owner may obtain performance of some or all of the Contractor's obligations under the Contract from other parties, including, but not limited to, Contractor suppliers and subcontractors. Contractor hereby assigns all rights that it has or may come to have against any party for performance of all or any part of the Work, which assignment is absolute, but Owner agrees not to exercise its rights under such assignment until the Contract is terminated. Contractor shall obtain written agreement from its subcontractors and suppliers that the Owner may exercise its rights pursuant to this assignment after termination of this Contract and shall provide the same to the Owner upon Owner's request for the same. Upon termination of the Contract, the Contractor shall immediately cease performance of any Work and shall promptly remove all materials and equipment belonging to the Contractor that have not been paid for by the Owner and that have not been incorporated into any premises owned by the Owner, from the Owner's premises. All materials, equipment and other items for which the Owner has paid (or for which the Owner thereafter pays, whether by setoff or any other method), or which have been incorporated into any premises owned by the Owner, as well as all licenses, software, patents, trademarks, servicemarks, and other intellectual property rights and materials referenced in § 15(c-e) of this Agreement shall become the property of the Owner upon termination of the Contract. Upon

termination, the Contractor shall also deliver to Owner all tools, equipment, and other items owned or provided to the Contractor by or on behalf of the Owner. If, after termination, the amounts unpaid under the Contract, plus the amount of payments received by the Owner upon any bond supplied pursuant to the Contract, are not sufficient to fully compensate the Owner for its damages, losses and costs resulting directly or indirectly from the completion of the Work by the Owner, then the Contractor shall pay any excess amount to the Owner within 30 days following receipt of an undisputed invoice from the Owner. The Owner shall have no obligation to complete the Work upon or after termination of the Contract and may set off any damages suffered as a result of any termination from any amounts otherwise owed to the Contractor by the Owner, whether pursuant to the Contract or otherwise. All guarantees, warranties, and indemnification rights that were provided to Owner under the terms of this Contract with respect to any Work performed prior to the termination of this Contract, shall survive and continue in full force and effect despite such termination.

32. No Third Party Beneficiaries. The Contract is made solely for the benefit of the Owner and the Contractor. No other person or entity shall have the ability to bring any action against the Owner as a result of the Contract, or to assume that the Owner will exercise any rights or remedies provided in the Contract. No person or entity other than the Owner and the Contractor shall under any circumstances be deemed to be a beneficiary of any provision of this Agreement.

33. Miscellaneous. The effective date of the Contract shall be the earlier of the date on which Contractor begins performance thereunder or the date of the Contractor's signature on the Agreement. No failure to exercise, or delay in exercising, any right or remedy of either party under the terms of the Contract shall constitute a waiver or relinquishment of that right or remedy. No waiver or relinquishment by either party of any default or of any right under the terms of the Contract shall be deemed a waiver or relinquishment of any subsequent default or right or of the same default or right arising at another time. The Contract constitutes the entire agreement of the parties with respect to its subject matter. If any provision of the Contract is held to be invalid, such invalidity shall not affect the remaining provisions of the Contract. Amendments to the Contract must be in writing and signed by both parties. Headings are provided for the convenience of the parties, and shall not affect the interpretation of any provision of the Contract. The Contract shall be binding upon the Owner and the Contractor, and their respective heirs, executors, administrators, successors, and permitted assigns.