

MAINE STATE HOUSING AUTHORITY
HOME ENERGY ASSISTANCE PROGRAM &
ENERGY CRISIS INTERVENTION PROGRAM
VENDOR AGREEMENT
(PROPANE, ELECTRICITY, AND NATURAL GAS)

1. PARTIES TO AGREEMENT.

- A. Agreement. Maine State Housing Authority, a public body corporate and politic and an instrumentality of the State of Maine, with its offices at 353 Water Street, Augusta, Maine 04330 (“MaineHousing”) and

_____ with its offices at

_____,
(Street Address)

_____,
(P.O. Box, if any)

_____,
(Town or City, State, and Zip Code)

_____,
(Phone #)

(“Vendor”) hereby agree that the Vendor will deliver Home Energy to Eligible Households receiving HEAP benefits and provide additional services described in this Agreement that are authorized by MaineHousing or Subgrantee (as defined herein) and that MaineHousing will pay the Vendor for deliveries of Home Energy and such additional services in accordance with the terms and conditions of this Agreement (the “Agreement”).

- B. Taxpayer Identification Number. Vendor's federal income taxation Taxpayer Identification Number is _____.

2. DEFINITIONS.

Capitalized terms not otherwise defined in this Agreement have the same meaning as set forth in the Rule. As used in this Agreement, the following terms have the following meanings:

- A. “Annual Consumption Report” means the annual report Vendors must submit to MaineHousing to report their HEAP customers’ Home Energy deliveries from May 1st through April 30th.
- B. “Benefit” means the dollar amount of Fuel Assistance an Eligible Household receives.
- C. “Benefit Return Form” means the form prescribed or accepted by MaineHousing that requests the return of all or some part of a payment made to the Vendor under

this Agreement, attached hereto as Appendix A and made a part hereof, as may be revised from time to time by MaineHousing.

- D. “Close-out” means the reconciliation of receipts and use of all Fuel Assistance and ECIP funds by Vendor. It is Vendor’s responsibility to keep this information by Eligible Household and provide it to MaineHousing upon request.
- E. “Discount Off Retail (DOR)” means the seven cents (\$0.07) deducted from a Vendor’s Retail Cash Price for all Home Energy deliveries for the fuel type listed on the Vendor Voucher Report paid with Benefits and any Home Energy deliveries in that same Program Year paid with client funds. ECIP deliveries are not subject to Discount Off Retail.
- F. “ECIP” means the Energy Crisis Intervention Program component of HEAP.
- G. “Eligible Household” shall have the same meaning as set forth in the Rule.
- H. “HEAP” means Home Energy Assistance Program.
- I. “Home Energy” means a source of heating in a Dwelling Unit or a Rental Unit (each as defined in the Rule) that, for purposes of this Agreement, is either propane, electricity or natural gas.
- J. “Incidental Costs” means costs of services billed to an Eligible Household by a Vendor related to the use or delivery of Home Energy including, but not limited to, surcharges, penalty charges, reconnection charges, clean and repair service charges, security deposits, delivery charges, and insurance.
- K. “Life Threatening Crisis” means the household is currently without heat or utility service to operate a heating source.
- L. “Price Protection Plan” has the meaning set forth in Section 5.C.4 of this Agreement.
- M. “Program Year” means the period of time beginning October 1, 2014 and ending September 30, 2015.
- N. “Purchase Order” means the document issued by MaineHousing or Subgrantee, as the case may be, that authorizes the Vendor to deliver Home Energy to an Eligible Household under ECIP. At a minimum the Purchase Order shall identify the Eligible Household, the type of ECIP benefit to be delivered to the Eligible Household, and the amount of ECIP benefit spent on the Eligible Household or credited to its customer account.
- O. “Records” means any of the Vendor's books, documents, purchase orders, price quotes, invoices, contracts, payroll reports, financial statements, papers or things that are necessary or desirable for the procurement or delivery of Home Energy or other services authorized under HEAP or ECIP, whether in paper, electronic, magnetic or any other form.

- P. “Retail Cash Price” means the posted amount Vendor charges for Home Energy to retail customers if paid for at the time of delivery.
- Q. “Rule” means the Home Energy Assistance Program Rule, Chapter 24 of the Rules of the Maine State Housing Authority.
- R. “Subgrantee” means a public or private nonprofit agency, or municipality, selected by MaineHousing to operate and administer HEAP and ECIP, in whole or in part, within the geographic area in which an Eligible Household resides.
- S. “Vendor” means the individual or entity, identified as such in Section 1 of this Agreement, that supplies Home Energy directly to an Eligible Household and includes any subsidiary or affiliate of such entity.
- T. “Vendor Voucher Report” means the document issued by MaineHousing or Subgrantee, as the case may be, that authorizes the Vendor to deliver Home Energy to an Eligible Household under HEAP. At a minimum, the Vendor Voucher Report shall identify the Eligible Household, the type of Home Energy to be delivered to the Eligible Household, and the amount of the HEAP benefit to be credited to the Eligible Household’s customer account with the Vendor.
- U. “Watch List” means the MaineHousing list of Vendors that will not receive payment in advance for Eligible Households’ Benefits. In the event MaineHousing determines, in its sole judgment, based on Supplier’s actions or omissions or other information obtained by MaineHousing directly or from any third party, that such actions, omissions or other information raise issues concerning Supplier’s continued ability to make Home Energy deliveries or otherwise comply with the terms of this Agreement, or that Supplier’s performance is out of compliance with the requirements of the Vendor Agreement, MaineHousing may, in its sole discretion, place Supplier on this list.

3. TERM OF AGREEMENT.

- A. Effective Date. The term of this Agreement begins on the later to occur of (i) August 1, 2014, or (ii) the date of formal approval of the State Plan for the Low Income Home Energy Assistance Program for FY 2014-2015 by the United States Department of Health and Human Services.
- B. Termination Date. The term of this Agreement ends on the effective date of termination pursuant to Section 12 hereof. Notwithstanding the termination of this Agreement, the provisions of this Agreement necessary to effectuate fully the rights of MaineHousing hereunder, including without limitation audit rights and the right to recover HEAP funds to which Vendor is not entitled hereunder, shall remain in effect for the period necessary to accomplish such objectives.

4. HEAP.

- A. Purpose. HEAP provides assistance to Eligible Households for the purchase of Home Energy unless the purchase is governed by Section 8 of this Agreement.
- B. Allowable Uses. Allowable uses of HEAP benefits shall be limited to payment to the Supplier for delivery of Home Energy.
 - 1. Vendor will apply Benefits to any indebtedness incurred for Home Energy deliveries for an Eligible Household on or after October 1st of the current Program Year whether or not the delivery has been paid for by client or a private party, such as family and friends, on behalf of the Eligible Household. Any deliveries paid by an organization, including but not limited to Citizen’s Energy, Keep ME Warm, Churches, general assistance programs, and municipalities, are not subject to this clause and cannot be covered with HEAP Benefits.
 - 2. Benefits are available for use during the Program Year of receipt and the Program Year immediately following. Vendors must review Eligible Household accounts at the end of each Program Year and identify Benefits that have not been used during those two Program Years. All such unused Benefits must be returned to MaineHousing no later than October 31 of the second Program Year.

5. DELIVERIES OF HOME ENERGY.

- A. Fuel Type. Vendor will deliver the following type(s) of Home Energy to Eligible Households under this Agreement (check all that apply):
 - Propane
 - Electricity
 - Natural Gas
- B. Delivery Authorization. Unless otherwise authorized by MaineHousing the Vendor will only deliver the Home Energy type stated on the Vendor Voucher Report or ECIP Purchase Order. If the Vendor delivers a Home Energy type other than what is stated on the Vendor Voucher Report, the Vendor will not be allowed to use Benefits for those deliveries.

Vendor may deliver the entire Benefit if the Household has placed an order (for partial Benefit) or if the Household is on automatic delivery unless:

- 1. The Household advises the Vendor all Applicants are moving;

2. The Household advises the Vendor that Household's Heating System has mechanical difficulties;
 3. The Household's Home Energy storage tanks are either being replaced or do not meet code.
- C. Maximum Delivery Price. Vendor agrees to charge an Eligible Household no more than the Retail Cash Price for the portion of Home Energy deliveries paid with HEAP funds. Vendor may not consider an Eligible Household's outstanding indebtedness to Vendor in calculating the Retail Cash Price applicable to a delivery of Home Energy to that Eligible Household.
- D. Vendor Payment Plans. Vendor shall not be required to charge the Cash Price for deliveries of Home Energy to an Eligible Household with whom Vendor has entered into a Price Protection Plan acceptable to MaineHousing. In such case, Vendor shall charge the Eligible Household the price in the Price Protection Plan.

For purposes of this Agreement, a Price Protection Plan shall be acceptable to MaineHousing if it is a binding written agreement between Vendor and an Eligible Household under which

- (i) the Eligible Household has prepaid for Home Energy deliveries based on a fixed price per gallon, or
- (ii) the Eligible Household has prepaid for Home Energy deliveries that are guaranteed not to exceed a specified maximum price per gallon, but pays only the actual Retail Cash Price up to the specified maximum price, or
- (iii) the Eligible Household makes payments under a budget plan based on a fixed price per gallon, or
- (iv) the Eligible Household makes payments under a budget plan based on estimated Home Energy deliveries, but pays no more than the Retail Cash Price if it is lower than the estimate on which the budget plan payments are based.

Pricing and other terms and conditions of a Price Protection Plan offered to Eligible Households receiving HEAP benefits must be the same as those offered to all of Vendor's other customers taking deliveries of the type of fuel specified in the Price Protection Plan, except that the HEAP benefit set forth in the Vendor Voucher Report for an Eligible Household and credited to the Eligible Household's customer account may not be forfeited or applied to any penalty, liquidated damages, or other charge or amount for any unused quantity of prepaid fuel. Vendor must provide to MaineHousing a copy of each type of Price Protection Plan that it offers to its customers in the form available to the Vendor's customers and the public (such as a

brochure or flyer) no later than the date that Vendor executes this Agreement.

Vendor – Please respond to the following questions:

Do you offer one or more Price Protection Plans to customers?

Yes How many? _____ No

- E. Previous Indebtedness. Vendor agrees not to apply any payment subject to this Agreement to any indebtedness incurred by a HEAP or ECIP recipient as a result of deliveries made or services provided before October 1st of the HEAP program year.
- F. Prohibited Discrimination. The Vendor agrees not to discriminate against any Eligible Household regarding the extension of credit to purchase Home Energy or other services, the price of Home Energy or other services, or the terms or conditions of the delivery of Home Energy or other services solely on the basis of its being an Eligible Household.

6. PAYMENT TO VENDOR.

- A. Payment. Subject to MaineHousing’s receipt of HEAP funds from the federal government and the provisions of this Agreement, MaineHousing will pay to the Vendor the Benefit amount indicated in each Vendor Voucher Report issued by MaineHousing or Subgrantee. Payments made by MaineHousing to the Vendor will be credited by the Vendor to the customer account of the Eligible Household identified in the Vendor Voucher Report. For convenience, MaineHousing may aggregate amounts payable to the Vendor under a Vendor Voucher Report, but the Vendor must credit Benefit amounts to the individual customer accounts of Eligible Households.
- B. Supplemental Payments. In the event that MaineHousing receives supplemental HEAP funds from the federal government, MaineHousing will allocate a portion of such funds to Vendor. Vendor will credit such supplemental HEAP funds to the customer accounts of Eligible Households in accordance with the Vendor Voucher Report or any written instructions given to Vendor by MaineHousing or its Subgrantee.
- C. Form of Payment. To the extent practicable, payments made to the Vendor by MaineHousing hereunder will be made by electronic transfer to the bank account designated by Vendor below:

Bank name: _____

Bank location: _____

Bank ABA routing number: _____

Name on account: _____

Vendor account number: _____

Type of Account: Checking _____ Savings _____

7. RETURN OF PAYMENTS.

In the event Vendor receives a Benefit Return Form, attached to this Agreement as Appendix A, from MaineHousing or Subgrantee requesting the return to MaineHousing of Benefit amounts paid to Vendor for the accounts of Eligible Households, Vendor shall return such Benefit amounts to MaineHousing on the terms and conditions set forth in the Benefit Return Form.

In the event Vendor becomes aware of any of the following events affecting an Eligible Household, Vendor shall, within fifteen (15) calendar days of the date that Vendor becomes aware of any such event, submit to MaineHousing a completed Benefit Return Form and return any remaining Benefits paid to Vendor on behalf of the affected Eligible Household:

- a. the death of an individual who was the sole member of an Eligible Household;
- b. the institutionalization of an individual who was the sole member of an Eligible Household;
- c. Vendor's receipt of a written notice from an Eligible Household that it no longer desires to receive Home Energy deliveries from Vendor;
- d. Eligible Household has not received deliveries of Home Energy for twelve (12) consecutive months;
- e. Eligible Household's Benefit was issued before the previous Program Year but remains unused by Eligible Household;
- f. Eligible Household has moved; or
- g. Vendor has been paid an excessive Benefit amount for the account of the Eligible Household.

Vendor shall return to MaineHousing all unused HEAP funds in its possession or custody, whether directly or indirectly, within fifteen (15) calendar days of the termination of this Agreement pursuant to Section 12 hereof.

With respect to each return of HEAP funds pursuant to this Section 7, the Vendor agrees to provide its written statement setting forth the name and address of the Vendor, the name and address of the Vendor's customer, the customer's account number, the amount of Benefits returned, a detailed account summary showing delivery and payment activity from the preceding May 1st forward of the benefit year(s) being returned, and a concise explanation of the reason for the return of funds and to provide any other information required by MaineHousing related thereto.

8. ECIP.

- A. Purpose. ECIP assists Eligible Households confronted by weather-related and supply shortage emergencies and other household energy-related emergencies by providing limited amounts of Home Energy and related services.
- B. Allowable Uses. The availability of ECIP benefits is limited as follows:
1. Payment to the Vendor for the delivery of Home Energy to an Eligible Household consistent with the purpose of ECIP, and payment of surcharges associated with unscheduled deliveries to the Eligible Household.
 2. Payment of utility costs in the event the utility is (a) necessary for the operation of the device used by the Eligible Household to heat its residence and (b) the provider of the utility threatens to interrupt or discontinue service for failure to pay.
 3. Payment to the Vendor for emergency repairs to an Eligible Household's heating system performed by a licensed technician.
 4. The Eligible Household may not exceed its maximum allowable annual ECIP benefit.
- C. Payments. Vendor agrees to deliver Home Energy to an Eligible Household pursuant to the terms of the Purchase Order. Vendor shall receive payment within ten (10) business days of submission of the Vendor's invoice for services rendered or delivery ticket for fuel delivered to the Eligible Household pursuant to the Purchase Order. Vendor must submit copies of the Purchase Order, metered delivery ticket, and billing statement listing all charges to Subgrantee for payment.
- D. Benefit Limit. Vendor acknowledges and understands that the maximum allowable annual benefit per Eligible Household permitted under ECIP is prescribed by MaineHousing or Subgrantee.
- E. Time of Deliveries. . Notwithstanding any other provision of this Agreement, deliveries of Home Energy or services pursuant to this Section 8 must be made when prescribed by Subgrantee and in any case no later than eighteen (18) hours from the time of the request made by the Subgrantee if the Eligible Household is experiencing a Life Threatening situation and forty-eight (48) hours in all other cases.

9. RECORDKEEPING.

- A. Maintenance and Availability. Vendor agrees to prepare, retain, make available, and supply to MaineHousing Records and other information necessary, as MaineHousing may determine, to audit and evaluate the Vendor's performance under this Agreement. Records shall be available for inspection and copying by MaineHousing at the Vendor's office during Vendor's regular business hours. Records and

information shall be in such form and shall be stored as may be prescribed by MaineHousing. In addition to the other rights of MaineHousing under this Section 9.A, MaineHousing, the United States Department of Health and Human Services, and the United States Inspector General and their respective representatives shall have access to all Records for the purpose of reviewing, examining, inspecting, investigating, auditing, copying, translating or transcribing any information contained therein. Vendor shall cooperate fully with any such action by the Federal government or MaineHousing.

B. Retention. The Vendor shall retain the Records for a period of three (3) years after termination of this Agreement. This provision shall survive the termination of this Agreement.

C. Content. At a minimum, Vendor agrees to prepare, retain and provide to MaineHousing Records consisting of each of the following:

1. The total amount and cost of Home Energy delivered to each Eligible Household annually from May 1st through April 30th. Annual Consumption Reports are due on the date prescribed by MaineHousing.
2. The amount of payments for Home Energy and eligible services, including ECIP services, made on behalf of each Eligible Household by MaineHousing or Subgrantee.
3. The amount of unexpended HEAP benefits allocated to each Eligible Household.
4. A daily log of Vendor's posted Retail Cash Price.

D. Access. With respect to any specified Eligible Household, Vendor agrees to provide documentation relative to the amount of HEAP and ECIP benefits, the amount of Home Energy and other services supplied as of a certain date, and the amount of remaining HEAP benefits to the following upon their written request:

1. MaineHousing;
2. Subgrantee; or
3. Eligible Household.

10. **REPORTS.**

Vendor agrees to submit, in such form as may be prescribed by MaineHousing, such reports or written answers to specific questions, surveys, or questionnaires as MaineHousing may determine necessary, on or before a date specified by MaineHousing.

11. **ADVERTISING.**

Vendor agrees not to advertise in a manner, or otherwise distribute or provide information, that implies that HEAP or ECIP assistance is available only through the Vendor, or that applications for HEAP or ECIP assistance are accepted by the Vendor, or to take any other action that misleads or tends to mislead the public with respect to the availability or operation of HEAP or ECIP.

12. **SUSPENSION, TERMINATION AND BAR; WATCHLIST.**

- A. Suspension by MaineHousing. MaineHousing shall have the right to suspend in whole or in part from time to time the Vendor's deliveries of Home Energy or the performance of other services provided by Vendor under this Agreement whenever MaineHousing determines, in its sole judgment, that such suspension is in MaineHousing's best interest. Any such suspension shall be effected by notice to the Vendor specifying the extent to which deliveries of Home Energy or other performance of the services under this Agreement are suspended and the date on which such suspension is effective.
- B. Termination for Convenience by MaineHousing. MaineHousing shall have the right to terminate this Agreement if MaineHousing determines, in its sole judgment that such termination is in its best interest. In the event MaineHousing determines that such termination is in its best interest, it shall give notice of termination to Vendor stating the effective date of termination. In the event of such termination, MaineHousing shall be obligated to pay Vendor only for Home Energy deliveries actually made and other services actually performed by Vendor to the effective date of termination, provided that such deliveries and services conform to the requirements of this Agreement. Without limiting in any way MaineHousing's rights under this Section 12.B, MaineHousing may, at any time during the term of this Agreement, send a Notice of Contract Completion to the Vendor setting forth the end date of the Agreement.
- C. Termination for Cause by MaineHousing. MaineHousing shall also have the right to terminate this Agreement immediately in the event MaineHousing determines, in its sole judgment, that Vendor has failed to perform one or more of its obligations under this Agreement, or for the breach of any warranty or representation made by Vendor under this Agreement, and such termination shall be effective on the date specified in a notice of termination given by MaineHousing to Vendor.
- D. Termination by the Vendor. The Vendor may terminate this Agreement only with the written consent of MaineHousing upon thirty (30) days advance written notice to MaineHousing and an opportunity by MaineHousing to inspect the Records of the Vendor prior to the effective date of termination. No consent of MaineHousing will be required in the event Vendor gives MaineHousing notice of its intent to cease doing business as a vendor of Home Energy. In the event Vendor terminates this Agreement without the required notice or any required consent of MaineHousing, such termination shall be a default of this Agreement by Vendor.

- E. Bar. MaineHousing may bar the Vendor from participation in any other fuel assistance programs administered by MaineHousing or its agents for the Vendor's failure to abide by the terms of this Agreement or for any malfeasance or misfeasance with respect to the delivery of Home Energy or other services under HEAP or ECIP.

- F. Watch List. In the event MaineHousing determines, in its sole judgment, based on Vendor's actions or omissions or other information obtained by MaineHousing directly or from any third party, that such actions, omissions or other information raise issues concerning Vendor's continued ability to make Home Energy deliveries or otherwise comply with the terms of this Agreement, or that Vendor's performance is out of compliance with the requirements of this Agreement, MaineHousing may, in its sole discretion, place Vendor on a "Watch List." After placing Vendor on a Watch List, MaineHousing will schedule an audit of Vendor's performance under this Agreement at Vendor's premises, which audit will include, without limitation, a review of HEAP funds records, Eligible Household accounts, and Home Energy delivery information. At a minimum, Vendor shall remain on the Watch List pending action on the auditor's recommendation to MaineHousing's Director of Energy and Housing Services. Such recommendation may include, without limitation, taking any one or more of the following actions: maintaining Vendor's Watch List status; monitoring by MaineHousing or Subgrantee of Vendor's performance under this Agreement at Vendor's location or elsewhere; providing guidance or other assistance to Vendor to address performance issues; implementing additional recordkeeping and reporting requirements; requiring Vendor to turn over to MaineHousing HEAP funds paid to Vendor under one or more Vendor Voucher Reports for credit to Eligible Household customer accounts with Vendor; and issuing a Deficiency Notice to Vendor, as provided in Section 13.B hereof. For so long as Vendor remains on the Watch List, no advance payment of HEAP funds, including HEAP benefit amounts, will be made by MaineHousing or Subgrantee to Vendor. In such event, payments of HEAP benefit amounts shall be made to Vendor only after satisfactory proof of actual Home Energy deliveries to Eligible Households complying with the terms of this Agreement has been submitted to MaineHousing by Vendor on terms and conditions required by MaineHousing. Payment to Vendor will be processed in accordance with the normal HEAP payment cycle.

13. PERFORMANCE BY VENDOR; DEFICIENCY NOTICE.

- A. Vendor shall perform each and every one of its obligations under this Agreement in a professional and workmanlike manner in accordance with the requirements set forth herein and shall conform to the standards of care applicable to the services provided hereunder.

- B. In the event MaineHousing determines, in its sole judgment, that Vendor has not performed in accordance with one or more of the requirements of this Agreement, MaineHousing will give Vendor a notice stating the respects in which Vendor's performance is deficient and the time period within which Vendor must conform its performance to the requirements of this Agreement (the "Deficiency Notice").

Notwithstanding any other provision of this Agreement, no Deficiency Notice shall be required for any deficiency not capable of being cured, in MaineHousing's sole judgment. In the event Vendor fails to correct deficiencies in its performance within the time specified in the Deficiency Notice, or no Deficiency Notice is required, MaineHousing shall have the right and option to exercise one or more of its rights and remedies for default by Vendor provided in this Agreement.

14. DEFAULT REMEDIES.

In addition to the right to terminate this Agreement as provided in Section 12.C hereof and the other rights and remedies of MaineHousing provided in this Agreement, in the event of default by Vendor in the performance of one or more of its obligations under this Agreement, MaineHousing may:

- a. withhold any further payments to Vendor;
- b. offset any amounts owed Vendor under this Agreement against any damages or costs incurred by MaineHousing as a result of Vendor's failure to perform its obligations under this Agreement, including but not limited to costs associated with procuring replacement services and attorneys' fees and legal costs;
- c. recover from Vendor all amounts paid to or otherwise obtained by Vendor as a result of any malfeasance or misfeasance by Vendor;
- d. bring an action against Vendor for specific performance to require Vendor to turn over to MaineHousing any Record to which MaineHousing is entitled to inspect, copy, audit or receive hereunder or to enjoin Vendor from destroying or removing any such Record;
- e. bring an action against Vendor for specific performance to require Vendor to turn over to MaineHousing HEAP funds paid to Vendor under one or more Vendor Voucher Reports for credit to Eligible Household customer accounts with Vendor or to enjoin Vendor from withdrawing, disbursing or retaining such funds; or
- f. exercise any other right or remedy available to MaineHousing at law or in equity.

MaineHousing may, at its sole option, exercise one or more of such rights and remedies, either singly, simultaneously or sequentially, and the exercise of any right or remedy shall not preclude the exercise of any other right or remedy at any time.

15. CONFIDENTIAL INFORMATION.

- A. Confidentiality and Nondisclosure. Vendor shall keep confidential and shall not disclose, and shall cause its employees, officers, agents, contractors, subcontractors,

and other representatives to keep confidential and not disclose, any information, whether written or oral, acquired by any of them relating to this Agreement, including without limitation information provided or submitted by an applicant for HEAP or ECIP benefits or an Eligible Household receiving HEAP or ECIP benefits, or by Subgrantee, MaineHousing, or any third party concerning any such applicant or Eligible Household.

All such information shall be confidential information under this Agreement without the need to specifically designate it as such. This provision shall survive the termination of this Agreement.

- B. Legal Duty to Disclose. Nothing in this section shall be construed to prohibit the disclosure of any information that the Vendor is required to disclose pursuant to applicable law. In the event Vendor receives a request for disclosure of confidential information and such disclosure is required by law, Vendor shall, upon receiving such request, immediately notify MaineHousing thereof. Vendor shall not disclose such information until it has consulted with MaineHousing after providing such notice.
- C. Protection of Personally Identifiable Information. Vendor shall safeguard and protect from disclosure at all times, and shall cause its employees, officers, agents, contractors, subcontractors and other representatives to safeguard and protect from disclosure at all times, all information about applicants for HEAP or ECIP benefits or members of Eligible Households receiving HEAP or ECIP benefits that could be used to determine or trace the identity of such applicants or members of Eligible Households, including but not limited to the information described in Section 15.A above (“Personally Identifiable Information”). Vendor shall, without limitation, take the following steps to safeguard and protect Personally Identifiable Information from disclosure:
1. Put measures in place to prevent the loss, theft, misappropriation or inadvertent disclosure of Personally Identifiable Information, such as removing documents that contain Personally Identifiable Information from printers or fax machines, not leaving paperwork containing Personally Identifiable Information on desks or other work areas unattended, placing paperwork containing Personally Identifiable Information in a locked file at the end of the business day, and shredding documents containing Personally Identifiable Information that are no longer needed (unless required to be retained pursuant to this Agreement).
 2. Encrypt all Personally Identifiable Information contained on computers, laptops, and other electronic devices or media used, in whole or in part, in providing services under or administering this Agreement, whether such Personally Identifiable Information is contained in spreadsheets, e-mails, attachments, or otherwise.

3. Send e-mail attachments only if encrypted or only through a secure e-mail server.
4. Make employees, officers, agents, contractors, subcontractors and other representatives of Vendor aware that the responsibility to safeguard and protect Personally Identifiable Information applies at all times, whether or not they are at a work location during normal business hours.
5. Limit disclosure of Personally Identifiable Information to only those persons who have a direct need to know the Personally Identifiable Information in order to provide deliveries of Home Energy and other services to Eligible Households under this Agreement, and advise them to take steps to safeguard and protect Personally Identifiable Information from inadvertent disclosure and not to disclose any Personally Identifiable Information to other persons.

The provisions of this Section 15.C shall survive the expiration or earlier termination of this Agreement.

16. INDEMNIFICATION.

Vendor agrees to indemnify, defend and hold MaineHousing harmless from and against any and all claims, losses, damages, demands, suits, costs or judgments, including reasonable attorneys' fees, arising out of any act or omission by the Vendor or its officers, agents, employees, contractors, or subcontractors or any other person or entity furnishing or supplying goods, services, materials or supplies in connection with the performance of this Agreement, including without limitation deliveries of Home Energy and heating system repair under ECIP. This provision shall survive the termination of this Agreement.

17. SUCCESSOR IN INTEREST.

Vendor agrees that in the event it voluntarily transfers all or substantially all of its assets, it shall, in connection with such transfer, require the transferee to assume all liabilities, obligations, duties and responsibilities imposed hereunder as though such transferee had originally entered into this Agreement, provided, however, that MaineHousing has given its prior written consent to such assumption. Vendor further agrees to provide MaineHousing with thirty (30) days prior written notice of its intent to transfer all or substantially all of its assets.

18. COMPLIANCE WITH LAWS.

Vendor warrants and represents that it shall comply with the Maine Housing Authorities Act, 30-A M.R.S.A. §4701, et seq.; the federal law and regulations that govern the HEAP and ECIP programs, including without limitation, 42 U.S.C. §§8621 - 8629, 45 C.F.R. §§96.1 through 96.68, and 45 C.F.R. §§96.80 - 96.89; the Rule; the Certifications set forth in Appendix B and C attached hereto and made a part hereof and executed by Vendor; and any other applicable provision of federal or Maine law.

19. ENTIRE AGREEMENT AND SEVERABILITY.

This Agreement constitutes the entire agreement between MaineHousing and Vendor and supersedes any other contract, arrangement or understanding, written or oral, by and between the Vendor and MaineHousing for the services described herein for the term hereof. If any court determines that any provision of this Agreement is unenforceable, invalid or void, all other provisions of this Agreement not included in the court's determination shall remain in full force and effect, and both the Vendor and MaineHousing shall continue to be bound by them. Section and subsection headings in this Agreement have no legal significance and are only for convenient reference.

20. INDEPENDENT CONTRACTOR.

It is understood and agreed by the parties hereto that Vendor is acting in an independent capacity, as an independent contractor, in the performance of this Agreement, and not as an officer, agent or employee of MaineHousing.

21. ASSIGNMENT.

Vendor shall not assign or otherwise transfer this Agreement or any of its rights or obligations hereunder without the express prior written consent of MaineHousing, which consent, if given, may include conditions that MaineHousing determines, in its sole judgment, are appropriate or necessary. Any such assignment or other similar action taken by Vendor without such prior written consent shall be null and void and shall not release Vendor from its obligations, responsibility and liability under this Agreement.

22. COPYRIGHT.

The United States Department of Health and Human Services, as the federal agency providing HEAP and ECIP funds to MaineHousing that are being used to pay for Home Energy deliveries and other services provided by Vendor hereunder, shall have, pursuant to 45 C.F.R. §92.34, a perpetual, royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, for Federal government purposes, the copyright in all original written materials developed, generated or produced under this Agreement and paid with HEAP or ECIP funds.

23. AMENDMENTS.

The provisions of this Agreement may be amended only by mutual agreement of the parties hereto expressed in writing and signed by the parties.

24. GOVERNING LAW.

This Agreement shall be governed by the laws of the State of Maine and applicable federal law (excluding choice of law rules) both as to interpretation and performance.

25. NOTICES.

Any notice required or permitted under this Agreement shall be in writing and delivered in person, by fax, by e-mail, or by postage prepaid registered or certified mail, return receipt requested, to the addressee as set forth below.

To MaineHousing: Energy and Housing Services, Director
Maine State Housing Authority
353 Water Street
Augusta, Maine 04330-4633
Fax no: 207-624-5780
E-mail: mbaran@mainehousing.org

To the Vendor: _____ (Name of Vendor)
_____ (Name of Contact)
_____ (Address)
_____ (City, State, Zip)
_____ (Phone)
_____ (Fax)
_____ (E-mail address)
_____ (E-mail address for
Annual Consumption
Report)

26. WAIVER.

MaineHousing’s failure to enforce any provision of this Agreement or to exercise any right or seek any remedy against the Vendor for default of this Agreement, or MaineHousing’s acceptance of any performance by the Vendor under this Agreement during any such default, shall not be deemed to constitute a waiver of any rights, causes of action, or remedies available to MaineHousing under this Agreement, at law or in equity, and MaineHousing shall fully retain all such rights, causes of action and remedies.

27. TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION.

Vendor, by its duly authorized representative signing below, certifies that the number shown in Section 1 hereof is its correct Taxpayer Identification Number, and that it is not subject to backup withholding because (a) it is exempt from backup withholding, or (b) it has not been notified by the Internal Revenue Service that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the Internal Revenue Service has notified it that it is no longer subject to backup withholding.

28. NONDISCRIMINATION.

During the term of this Agreement, Vendor shall not discriminate in any manner against any person because of race, color, religious creed, sex, sexual orientation, national origin, ancestry, age, physical or mental disability, or familial status. Such prohibition against discrimination shall include, but not be limited to, all actions relating to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training.

29. AUTHORIZED SIGNATURE.

The undersigned representative of Vendor hereby warrants and represents that he/she has the authority to execute this Agreement on behalf of the Vendor and that the Vendor shall be bound by his/her action.

IN WITNESS WHEREOF, MaineHousing and the Vendor, by their respective representatives duly authorized, have executed this Agreement in two (2) counterpart originals, each being one and the same agreement, effective as of the date referenced in Section 3 hereof.

MAINE STATE HOUSING AUTHORITY

Witness: _____

By: _____

Michael Baran
Director, Energy & Housing Services

Date _____

VENDOR

Witness: _____

By: _____

Print Name: _____

Title: _____

Date _____

CAA: _____

DATE: _____

HEAP BENEFIT RETURN FORM

Vendor Name: _____

Please return unused HEAP funds for the following customer and provide a detailed transaction report showing deliveries and payment activity from May 1st forward for the benefit year(s) being returned. The requested funds and account summary must be submitted to MaineHousing within 15 days (no later than the date specified below). **Failure to comply may result in suspension and/or termination of your contract.**

Return funds to:
Maine State Housing Authority, 353 Water Street, Augusta, Maine 04330,
ATTN: Energy and Housing Services.

Return funds by: _____ Program Year: July 1, _____ - June 30, _____

Amount to be returned: _____

Customer/Client Name: _____

Client Address: _____

Phone Number: _____ Account #: _____

Reason for Return (please circle):

- A. moved (in state) B. moved (out of state) C. incorrect vendor D. vendor change
- E. deceased F. inactive account (12 months) G. over-payment
- H. Other (specify reason): _____

Requested by: _____ Telephone: _____

CAA or MaineHousing use only:			
New Address:			
New Vendor:		Acct. #:	
Fuel Type:		Copy of Lease in File (Y/N)	Subsidized (Y/N):
Heat is now included (Y/N):		Electricity is now included (Y/N):	

APPENDIX B

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant inaccurately rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and /or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is

erroneous. A participant may decide the method and the frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters a lower tier covered transaction with a person who is suspended, debarred ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

Printed Name & Title of Authorized Representative

Signature

Date

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreement

That undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, Grant, Loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements and that all sub-recipient shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required

statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature and Title _____ Date _____

Printed Name and Address:

_____ (Name of Organization)

_____ (Address)

_____ (City)

certloby.doc