MAINE STATE HOUSING AUTHORITY

LOW INCOME HOME ENERGY ASSISTANCE PROGRAM &
ENERGY CRISIS INTERVENTION PROGRAM

VENDOR AGREEMENT
(OIL AND KEROSENE)

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 #)

("Supplier") hereby agree that the Supplier will deliver Home Energy to Eligible Households receiving LIHEAP benefits and provide additional services described in this Agreement that are authorized by MaineHousing or Sub-grantee (as defined herein) and that MaineHousing will pay the Supplier for deliveries of Home Energy and such additional services in accordance with the terms and conditions of this Agreement ("Agreement").

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

2. DEFINITIONS.

As used in this Agreement, the following terms have the following meanings:

A. "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 Supplier under this Agreement, attached hereto as Appendix E and incorporated herein by reference, as may be revised from time to time by MaineHousing.

B. "Clean, Tune, and Evaluate (CTE) Services" means services performed under the CTE demonstration program, in accordance with Section 9 of this Agreement, including brushing and vacuuming heating appliance heat exchangers, warm air

furnaces, steam and hot water boilers, flue passages, and flue connectors; lubricating motors and bearings; replacing belts, filters and electrodes; replacing and correcting the size of nozzles; performing combustion efficiency testing; and any other cleaning procedures recommended by the manufacturer.

C. "CTE Eligible Households" means Eligible Households selected by MaineHousing to receive one or more CTE Services.

D. "Discount Off Retail Cash Price (DOR)" means the Supplier's posted Retail Cash Price on the day of delivery of Home Energy, less a discount off the Retail Cash Price, as further described in Section 5.C.2 of this Agreement.

E. "ECIP" means the Energy Crisis Intervention Program.

F. "Eligible Household" shall have the same meaning as set forth in the Rule.

G. "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 heating oil or kerosene.

H. "LIHEAP" means Low Income Home Energy Assistance Program.

I. "Margin Over Rack (MOR)" means the amount above the price charged at the terminal where a wholesale customer who buys transport truck lots of heating oil or kerosene takes delivery. For purposes of this Agreement, the rack price will be based on the Oil Price Information Service (OPIS) average rack price for the applicable fuel at the designated terminal on the day preceding a delivery of Home Energy, based on the most recent OPIS report available at 2:00 p.m. on that day. For Saturday, Sunday or Monday deliveries, the average rack price for the preceding Friday, based on the most recent OPIS report available at 2:00 p.m. on that Friday, will be used.

J. "Price Protection Plan" has the meaning set forth in Section 5.C.4 of this Agreement.

K. "Purchase Order" means the document issued by MaineHousing or Sub-grantee, as the case may be, that authorizes the Supplier 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.

L. "Records" means any of the Supplier'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 LIHEAP or ECIP, including without limitation CTE Services, whether in paper, electronic, magnetic or any other form.

M. "Retail Cash Price" means the amount Supplier charges for Home Energy to retail customers if paid for at the time of delivery.

N. "Rule" means the Home Energy Assistance Program Rule, Chapter 24 of the Rules of the Maine State Housing Authority.

O. "Sub-grantee" means a public or private nonprofit agency, or municipality, selected by MaineHousing to operate and administer LIHEAP and ECIP, in whole or in part, within the geographic area in which an Eligible Household resides.

P. "Supplier" 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.

Q. "Vendor Reimbursement Request Form" means the form prescribed or accepted by MaineHousing that authorizes payment to Supplier pursuant to Section 8 of this Agreement, attached hereto as Appendix D and incorporated herein by reference, as may be revised from time to time by MaineHousing.

R. "Voucher/Benefit Notice" means the document issued by MaineHousing or Sub-grantee, as the case may be, that authorizes the Supplier to deliver Home Energy to an Eligible Household under LIHEAP. At a minimum, the Voucher/Benefit Notice shall identify the Eligible Household, the type of Home Energy to be delivered to the Eligible Household, and the amount of the LIHEAP benefit to be credited to the Eligible Household's customer account with the Supplier.

3. TERM OF AGREEMENT.

A. Effective Date. The term of this Agreement begins on the later to occur of (i) the date of execution of this Agreement by both MaineHousing and the Supplier, or (ii) the date of formal approval of the State Plan for the Low Income Home Energy Assistance Program for FY 2009-2010 by the United States Department of Health and Human Services.

B. Expiration Date. The term of this Agreement ends on the earlier to occur of (i) June 30, 2010, or (ii) the effective date of termination pursuant to Section 13 of this Agreement. Notwithstanding the expiration or earlier 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 LIHEAP funds to which Supplier is not entitled hereunder, shall remain in effect for the period necessary to accomplish such objectives.

4. LIHEAP.

A. Purpose. LIHEAP 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 LIHEAP benefits shall be limited to payment to the Supplier for delivery of Home Energy and for CTE Services and related heating system services authorized by MaineHousing pursuant to Section 9 of this Agreement.

5. DELIVERIES OF HOME ENERGY.

A. Fuel Type. Supplier will deliver the following type(s) of Home Energy to Eligible Households under this Agreement (check all that apply):

☐ Heating oil

☐ K-1 Kerosene

B. Delivery Authorization. MaineHousing or Sub-grantee will issue Vouchers/Benefit Notices to Supplier authorizing Supplier to deliver Home Energy to the Eligible Households identified in the Vouchers/Benefit Notices.

C. Supplier Pricing Options.

1. No later than the date that Supplier executes this Agreement, Supplier shall elect one of the three fuel pricing options described below in Option A, Option B, and Option C. Supplier will indicate its choice of pricing option as follows:

Margin Over Rack

Option A or Option B Complete Appendix A

Discount Off Retail Cash Price

Option C Complete Appendix B

2. Supplier must offer to Eligible Households who have not previously entered into a Price Protection Plan with Supplier as provided in Section 5.C.4 hereof one of the fuel pricing options described in Options A through C below. Supplier must offer the same pricing option to all such Eligible Households served by Supplier.

Option A. Pricing at Margin Over Rack (MOR) for LIHEAP Portion of Home Energy Deliveries.

For the portion of Home Energy deliveries paid with LIHEAP funds, the maximum per-gallon delivery price that Supplier may charge an Eligible Household is the lesser of

(i) Supplier's posted Retail Cash Price on the day of delivery, or

(ii) the MOR LIHEAP-Only Oil Price or the MOR LIHEAP-Only Kerosene Price, as applicable.

If Supplier elects Option A, the margins for the MOR LIHEAP-Only Oil Price and the MOR LIHEAP-Only Kerosene Price will be the amounts set forth in Appendix A to this Agreement, which shall be added to the average rack price applicable to the fuel at the Supplier's designated terminal on the day preceding a Home Energy delivery, based on the most recent OPIS report available at 2:00 p.m. MaineHousing shall establish Supplier's margin for each geographic region, as defined by MaineHousing, in which Supplier makes Home Energy deliveries to Eligible Households receiving LIHEAP benefits. The geographic regions defined by MaineHousing are set forth in Appendix C to this Agreement.

If elected by Supplier, this pricing option shall remain in effect through June 30, 2010.

Option B. Pricing at Margin Over Rack (MOR) for All Home Energy Deliveries.

For Home Energy deliveries to Eligible Households, including both the portion paid with LIHEAP funds and the portion paid with other funds, the maximum per-gallon delivery price that Supplier may charge an Eligible Household is the lesser of

(i) Supplier's posted Retail Cash Price on the day of delivery, or

(ii) the MOR All-Deliveries Oil Price or the MOR All-Deliveries Kerosene Price, as applicable.

If Supplier elects Option B, the margins for the MOR All-Deliveries Oil Price and the MOR All-Deliveries Kerosene Price will be the amounts set forth in Appendix A hereto, which shall be added to the average rack price applicable to the fuel at the Supplier's designated terminal on the day preceding a Home Energy delivery, based on the most recent OPIS report available at 2:00 p.m. MaineHousing shall establish Supplier's margin for each geographic region, as defined by MaineHousing, in which Supplier

makes Home Energy deliveries to Eligible Households receiving LIHEAP benefits. The geographic regions defined by MaineHousing are set forth in Appendix C to this Agreement.

If elected by Supplier, this pricing option shall remain in effect through June 30, 2010.

Option C. Pricing at Discount Off Retail Cash Price (DOR) for All Home Energy Deliveries.

For Home Energy deliveries to Eligible Households, including both the portion paid with LIHEAP funds and the portion paid with other funds, the maximum per-gallon delivery price that Supplier may charge an Eligible Household is the Supplier's posted Retail Cash Price on the day of delivery less the per-gallon discount set forth in Appendix B hereto.

If elected by Supplier, this pricing option shall remain in effect through June 30, 2010.

3. MaineHousing will make available to Supplier at approximately 2:00 p.m. by appropriate means determined by MaineHousing the heating oil and kerosene average rack prices to be used the following day by Supplier for Home Energy deliveries priced at MOR.

4. Notwithstanding Supplier's election of an MOR pricing option in Option A or Option B or a DOR pricing option in Option C, Supplier shall not be required to charge the MOR or DOR price, as applicable, to an Eligible Household with whom Supplier has entered into a Price Protection Plan acceptable to MaineHousing. In such case, Supplier 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 agreement between Supplier 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 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 LIHEAP benefits must be the same as those offered to all of Supplier's other customers taking deliveries of the type of fuel specified in the Price Protection Plan. Supplier 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 Supplier's customers and the public (such as a brochure or flyer) no later than the date that Supplier executes this Agreement.

D. Previous Indebtedness. Supplier agrees not to apply any payment subject to this Agreement to any indebtedness incurred by a LIHEAP or ECIP recipient as a result of deliveries made or services provided before October 1st of the LIHEAP program year. Supplier may not consider an Eligible Household's outstanding indebtedness to Supplier in calculating the Retail Cash Price applicable to a delivery of Home Energy to that Eligible Household.

E. Prohibited Discrimination. The Supplier 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 SUPPLIER.

A. Payment. Subject to MaineHousing's receipt of LIHEAP funds from the federal government, MaineHousing will pay to the Supplier the LIHEAP benefit amount indicated in each Voucher/Benefit Notice issued by MaineHousing or Sub-grantee. Payments made by MaineHousing to the Supplier will be credited by the Supplier to the customer account of the Eligible Household identified in the Voucher/Benefit Notice. For convenience, MaineHousing may aggregate amounts payable to the Supplier under multiple Vouchers/Benefit Notices, but the Supplier must credit LIHEAP benefit amounts to the individual customer accounts of Eligible Households.

B. Supplemental Payments. In the event that MaineHousing receives supplemental LIHEAP funds from the federal government, MaineHousng will allocate a portion of such funds to Supplier. Supplier will credit such supplemental LIHEAP funds to the customer accounts of Eligible Households in accordance with the Voucher/Benefit Notice or any written instructions given to Supplier by MaineHousing or its Sub-grantee.

C. Form of Payment. To the extent practicable, payments made to the Supplier by MaineHousing hereunder will be made by electronic transfer to the bank account designated by Supplier below:

Bank name: _____

Bank location: _____

Bank ABA routing number: _____

Name on account: _____

Supplier account number: _____

Type of Account: Checking _____ Savings _____

7. RETURN OF PAYMENTS.

Supplier agrees to notify and return to MaineHousing any excess or unused LIHEAP funds provided by MaineHousing to Supplier:

a. upon notification of the death of an individual who was the sole member of an Eligible Household;

b. upon Supplier's receipt of a written notice from an Eligible Household that it no longer desires to receive services or Home Energy deliveries from Supplier;

c. respecting any Eligible Household that has not received deliveries of Home Energy for 12 months;

d. within 30 days of the termination of this Agreement pursuant to Section 13 hereof; or

e. upon receipt of, and within the time period prescribed by, the Benefit Return Form from MaineHousing.

With respect to each return of LIHEAP funds made pursuant to this Section 7, the Supplier agrees to provide its written statement setting forth the name and address of the Supplier, the name and address of the Supplier's customer, the customer's account number, the amount of LIHEAP funds returned, and a concise explanation of the reason for the return of funds.

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 Supplier 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 Supplier 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. Supplier agrees to deliver Home Energy to an Eligible Household pursuant to the terms of the Purchase Order. Supplier shall receive payment within 10 days of submission of the Supplier's invoice for services rendered to the Eligible Household pursuant to the Purchase Order.

D. Benefit Limit. Supplier acknowledges and understands that the maximum allowable annual benefit per Eligible Household permitted under ECIP is prescribed by MaineHousing or the Sub-grantee.

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 Sub-grantee and in any case no later than 18 hours from the time of the request made by the Sub-grantee if the Eligible Household is in a life-threatening situation and 48 hours in all other cases.

9. CLEAN, TUNE, AND EVALUATE DEMONSTRATION PROGRAM.

A. Demonstration Program. If funding permits, for the 2009-2010 LIHEAP program year, MaineHousing may allocate LIHEAP funds for a Clean, Tune, and Evaluate demonstration program for CTE Services to CTE Eligible Households.

B. Selection of CTE Eligible Households. To be eligible to receive CTE Services, an Eligible Household must reside in a single-family home owned by the Eligible Household that has an inefficient heating system, as determined by MaineHousing. MaineHousing will select Eligible Households for participation in the CTE demonstration program based on said eligibility criteria and other factors as described in the Rule ("CTE Eligible Households").

C. CTE Services. If Supplier offers CTE Services to its customers, whether through its own employees or an independent contractor, Supplier shall be required to provide to CTE Eligible Households CTE Services authorized in writing by MaineHousing in a notice to Supplier. All CTE Services must be performed by a qualified oil burner technician in a good and workmanlike manner and in accordance with regulations of the Maine Oil and Solid Fuel Board as in effect from time to time.

Supplier – Please respond to the following questions:

1. Do you provide CTE Services to your customers? ☐ Yes ☐ No

   If you checked YES: Do you

   a. use your own employees? ☐ Yes ☐ No

   b. use contractors/subcontractors? ☐ Yes ☐ No

2. If you use contractors/subcontractors, please provide:

   Name(s) and address(es) of all contractor(s)/subcontractor(s) used:

   _____

   _____

   _____

   _____

   _____

   _____

   _____

D. Additional Services for CTE Eligible Households.

1. If in the course of providing CTE Services, a qualified oil burner technician determines that repairs to the CTE Eligible Household's heating system are necessary, Supplier shall provide to MaineHousing the technician's written recommendation, the reasons for the recommendation, the estimated cost, and the estimated remaining life of the heating system, all in the form that may be required by MaineHousing. MaineHousing shall determine, in its sole discretion, whether to authorize the repair(s) and shall notify Supplier in

writing of its decision. Supplier shall not commence any repair work unless Supplier has received the written authorization for the work from MaineHousing, and then shall perform only the authorized work. All repairs authorized by MaineHousing shall be performed by a qualified oil burner technician in a good and workmanlike manner and in accordance with the regulations of the Maine Oil and Solid Fuel Board as in effect from time to time.

2. If in the course of providing CTE Services, a qualified oil burner technician determines that replacement of the CTE Eligible Household's heating system is necessary, Supplier shall provide to MaineHousing the technician's written recommendation, the reasons for the recommendation, the estimated cost, and the estimated remaining life of the existing heating system, all in the form that may be required by MaineHousing. In the event that MaineHousing authorizes the heating system replacement, MaineHousing shall notify the Sub-grantee administering all or part of the LIHEAP program in the geographic area in which the CTE Eligible Household resides. Said Sub-grantee shall work with the Supplier and its qualified oil burner technician to ensure the replacement of the heating system with an economic and energy-efficient heating system based on specifications established or approved by MaineHousing. Sub-grantee shall monitor the installation of the replacement heating system and shall inspect the replacement upon completion of the work.

E. Payment to Supplier.

1. Upon the completion of the CTE Services for a CTE Eligible Household, Supplier shall provide its invoice to MaineHousing, identifying the CTE Eligible Household by name, address and customer account number, the specific CTE Services provided, and the charge for the CTE Services, and separately identifying any repairs previously authorized by MaineHousing and the charge for such repair services. MaineHousing shall pay Supplier up to $200 per CTE Eligible Household for the performance of CTE Eligible Services. In the event that MaineHousing has previously authorized heating system repairs, MaineHousing shall pay Supplier an amount up to the amount set forth in MaineHousing's prior written authorization of the repairs. Payments will be made to Supplier in accordance with Section 6.C of this Agreement.

2. In the event that MaineHousing has previously authorized replacement of a heating system, Supplier shall provide its invoice to MaineHousing for the heating system replacement upon completion of the work. MaineHousing shall pay Supplier an amount up to the amount set forth in MaineHousing's written notification to Sub-grantee authorizing the replacement, provided that no such payment shall be made to Supplier unless MaineHousing has

received a report from Sub-grantee stating that Sub-grantee has inspected the heating system replacement and that such replacement is satisfactory.

F. Use of Subcontractors by Supplier. Supplier may use qualified oil burner technicians employed by Supplier or may subcontract with one or more qualified oil burner technicians to provide CTE Services and authorized heating system repair or replacement services to CTE Eligible Households. In the event that Supplier subcontracts with a qualified oil burner technician, Supplier shall remain responsible for compliance with all of the terms and conditions of this Agreement.

G. Contracting by MaineHousing for CTE Services. In the event that Supplier does not offer CTE Services to its customers, MaineHousing may contract directly with one or more qualified oil burner technicians to provide CTE Services to CTE Eligible Households and authorized heating system repair or replacement on terms acceptable to MaineHousing.

10. RECORDKEEPING.

A. Maintenance and Availability. Supplier agrees to prepare, retain, make available, and supply to MaineHousing Records and other information necessary, as MaineHousing may determine, to audit and evaluate the Supplier's performance under this Agreement. Records shall be available for inspection and copying by MaineHousing at the Supplier's office during Supplier'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 10.A, MaineHousing and the United States Department of Health and Human Services 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. Supplier shall cooperate fully with any such action by the Federal government or MaineHousing.

B. Retention. The Supplier shall retain the Records for a period of three years after expiration or termination of this Agreement. This provision shall survive the expiration or earlier termination of this Agreement.

C. Content. At a minimum, Supplier 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. Reports are due on May 31st.

2. The amount of payments for Home Energy and eligible services, including ECIP and CTE Services, made on behalf of each Eligible Household by MaineHousing or Sub-grantee.

3. The amount of unexpended LIHEAP benefits allocated to each Eligible Household.

4. A daily log of Supplier's posted Retail Cash Price.

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

1. MaineHousing;

2. Sub-grantee; or

3. the Eligible Household.

11. REPORTS.

Supplier 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.

12. ADVERTISING.

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

13. SUSPENSION, TERMINATION AND BAR.

A. Suspension by MaineHousing. MaineHousing shall have the right to suspend in whole or in part from time to time the Supplier's deliveries of Home Energy or the performance of other services provided by Supplier 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 Supplier 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 Supplier stating the effective date of termination. In the event of such termination,

MaineHousing shall be obligated to pay Supplier only for Home Energy deliveries actually made and other services actually performed by Supplier 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 13.B, MaineHousing may, at any time during the term of this Agreement, send a Notice of Contract Completion to the Supplier setting forth the end date of the Agreement and providing for the submission of final Vendor Reimbursement Request Forms within the period specified in the Notice.

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 Supplier has failed to perform one or more of its obligations under this Agreement, or for the breach of any warranty or representation made by Supplier under this Agreement, and such termination shall be effective on the date specified in a notice of termination given by MaineHousing to Supplier.

D. Termination by the Supplier. The Supplier 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 Supplier prior to the effective date of termination. No consent of MaineHousing will be required in the event Supplier gives MaineHousing notice of its intent to cease doing business as a vendor of Home Energy. In the event Supplier terminates this Agreement without the required notice or any required consent of MaineHousing, such termination shall be a default of this Agreement by Supplier.

E. Bar. MaineHousing may bar the Supplier from participation in any other fuel assistance programs administered by MaineHousing or its agents for the Supplier'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 LIHEAP, ECIP, or the CTE demonstration program.

14. DEFAULT REMEDIES.

In addition to the right to terminate this Agreement as provided in Section 13.C hereof, in the event of default by Supplier in the performance of one or more of its obligations under this Agreement, MaineHousing may:

a. withhold any further payments to Supplier;

b. offset any amounts owed Supplier under this Agreement against any damages or costs incurred by MaineHousing as a result of Supplier'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 Supplier all amounts paid to or otherwise obtained by Supplier as a result of any malfeasance or misfeasance by Supplier; or

d. bring an action against Supplier for specific performance to require Supplier to turn over to MaineHousing any Record to which MaineHousing is entitled hereunder or to enjoin Supplier from destroying or removing any such Record.

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. Supplier and its employees, officers, agents and contractors shall keep confidential and shall not disclose:

(i) any information, including but not limited to statements of financial condition or information pertaining to financial condition, acquired by any of them if that information is or was provided by an applicant for LIHEAP or ECIP benefits, an Eligible Household, or a CTE Eligible Household or by Sub-grantee, MaineHousing, or any third party concerning any such applicant, Eligible Household, or CTE Eligible Household or

(ii) any other information acquired by Supplier or its employees, officers, agents, contractors or subcontractors in the course of the performance of this Agreement.

All such information shall be confidential information under this Agreement without the need to specifically designate it as such. This provision shall survive the expiration or earlier 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 Supplier is required to disclose pursuant to applicable law. In the event Supplier receives a request for disclosure of confidential information and such disclosure is required by law, Supplier shall, upon receiving such request, immediately notify MaineHousing thereof. Supplier shall not disclose such information until it has consulted with MaineHousing after providing such notice.

16. INDEMNIFICATION.

Supplier 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 Supplier 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 CTE Services and heating system repair and replacement under the CTE demonstration program. This provision shall survive the expiration or earlier termination of this Agreement.

17. SUCCESSOR IN INTEREST.

Supplier 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. Supplier 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.

Supplier 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 LIHEAP 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 F and Appendix G attached hereto and made a part hereof and executed by Supplier; and any other applicable provision of federal or Maine law.

19. ENTIRE AGREEMENT AND SEVERABILITY.

This Agreement constitutes the entire agreement between MaineHousing and Supplier and supersedes any other contract, arrangement or understanding, written or oral, by and between the Supplier 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 Supplier 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 Supplier 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.

Supplier 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 Supplier without such prior written consent shall be null and void and shall not release Supplier 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 LIHEAP and ECIP funds to MaineHousing that are being used to pay for Home Energy deliveries and other services provided by Supplier 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 LIHEAP 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

To Supplier: _____ ☑ (Name)
_____ ☑(Address)
_____ ☑ (City, State, Zip)
_____ ☑ (Phone)
_____ ☑ (Fax)
_____ ☑ (E-mail address)

26. WAIVER.

MaineHousing's failure to enforce any provision of this Agreement or to exercise any right or seek any remedy against the Supplier for default of this Agreement, or MaineHousing's acceptance of any performance by the Supplier 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.

Supplier, 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, Supplier 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 _____(name),

_____(title) of Supplier, hereby warrants and represents that he/she has the authority to execute this Agreement on behalf of the Supplier and that the Supplier shall be bound by his/her action.

IN WITNESS WHEREOF, MaineHousing and the Supplier, by their respective representatives duly authorized, have executed this Agreement in two (2) counterpart

originals, each being one and the same agreement, on the dates indicated, effective as of the date referenced in Section 3 hereof.

MAINE STATE HOUSING AUTHORITY

Witness: _____

Date: _____, 2009

By: _____
Kathy L. Kinch
Its Manager of Program Operations

SUPPLIER

Witness: _____ ☑

Date: _____,2009

By: _____ ☑

Typed Name: _____ ☑

Typed Title: _____ ☑

MARGIN OVER RACK PRICING OPTIONS

☐ **OPTION A**: Pricing at Margin Over Rack for LIHEAP Portion of Home Energy Deliveries

Supplier's margin in cents per gallon is:

	Oil	Kerosene
Region 1		
Region 2		
Region 3		
Region 4		

☐ **OPTION B**: Pricing at Margin Over Rack for All Home Energy Deliveries

Supplier's margin in cents per gallon is:

	Oil	Kerosene
Region 1		
Region 2		
Region 3		
Region 4		

DISCOUNT OFF RETAIL CASH PRICE PRICING OPTION

☐ **OPTION C: Pricing at Discount Off Retail Cash Price for All Home Energy Deliveries**

The discount to be applied to Supplier's posted Retail Cash Price is:

$0.07 cents per gallon.

APPENDIX C

GEOGRAPHIC REGIONS FOR MARGIN OVER RACK PRICING

REGION 1

REGION 2

REGION 3

REGION 4

APPENDIX D

VENDOR REIMBURSEMENT REQUEST FORM

Presentation of this form to the appropriate Community Action Agency within 5 working days of the delivery of ECIP services will allow you to receive reimbursement for:

1. **special delivery charges**
2. **furnace start-up fee**
3. **up to 50 gallons of fuel**

as long as ECIP funds are available and the client is program eligible.

Services Rendered _____ Price _____

Services Rendered _____ Price _____

Services Rendered _____ Price _____

TOTAL _____

Date _____

Company Name _____

Signature Fuel Dealer _____

Signature Customer _____

This reimbursement form should only be used for after hours, holiday, or weekend deliveries. During regular working hours prior permission from the CAP should be obtained.

White/Agency Canary/Fuel Dealer Pink/Customer

APPENDIX E

LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)

BENEFIT RETURN FORM

TO: _____
(Vendor Name)

FROM: Maine State Housing Authority

DATE: _____

We are requesting that the remaining credit balance for

_____
(client's name)

account number _____

be returned to:

Maine State Housing Authority at 353 Water Street, Augusta, Maine 04330-4633

no later than

_____.
(date)

_____
(Signature)

APPENDIX F

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

_____ ☑
Name & Title of Authorized Representative

_____ ☑ _____ ☑
Signature Date

APPENDIX G

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 _____ ☑

Typed Name and Address:

_____ ☑ (Name)

_____ ☑ (Address)

_____ ☑ (City)