

MAINE TOURISM MARKETING PARTNERSHIP PROGRAM

REGIONAL MARKETING GRANT

INTRODUCTION -- FY 2018

SCOPE

The primary objective of the Maine Tourism Marketing Partnership Regional Grant Program (MTMPP) is the creation and implementation of marketing programs designed to attract visitors to specific Maine tourism regions and strengthen the State's image as a travel destination by coordinating the promotional efforts of the private sector with those of the Office of Tourism. The goal is to assist new marketing initiatives, or to build and strengthen mature and healthy ones that align and support the Maine Office of Tourism's (MOT) Five-Year Plan Strategic Plan. (<https://visitmaine.com/tourism-partners/>). The Regional Destination Marketing Organizations are eligible for up to \$150,000 in the 2018 fiscal year.

TIMELINE

Timeline Regional Grant Program:

1st Friday of May:	Applications Due to MOT by 2:00 PM
3rd week of May:	Technical Review
4th week of May:	Award Announcements
July 1:	Contracts Begin
3 rd Thursday of January:	Mid-term Report Due to MOT
June 30:	Contracts End
September 30:	Final Report Due to MOT

REGIONAL GRANT ELIGIBILITY

Regional Destination Marketing Organizations (RDMO's) whose primary purpose is to attract visitors to each of the eight (8) designated regions are eligible to apply

- The RDMO must be a Maine-based 501C3 or C6 and must have been in existence for a minimum of three years.

- The RDMO must have a focus on travel, tourism and destination promotion.
- The RDMO’s Board must be broadly representative of the designated region and should include individuals representing the tourism interests within the defined region.
- The RDMO must have dedicated staff/grant manager and demonstrate staffing capacity to execute the proposed marketing plan to include: fulfillment, communications, reporting, invoicing and record keeping.
- The RDMO shall produce and execute an annual marketing plan consistent with the goals and objectives of the Maine Office of Tourism’s Five Year Plan which (Available on-line at www.MOTPartners.com.)
- The RDMO must have a designated regionally focused marketing committee and demonstrate regional outreach/communications of marketing plan with key partners and core constituents within the region.
- The RDMO must provide updates to its constituency about the progress of the MTMPP grant at quarterly meetings held for the purpose of providing updates and gathering feedback about MTMPP grant items.

Note: A previous unsatisfactory grant history, for any reason, could immediately disqualify a new MTMPP plan.

Definitions:

Tourism Regions are defined by the communities serving the tourism trade within a defined area (Towns by Tourism Region is available at www.visitmaine.com/resources)

Regional Destination Marketing Organization is an organization broadly representing the tourism regions defined in #1 and best suited to execute a marketing plan to attract visitors to a designated region.

Staffing Capacity is defined as the ability to fulfill the roles and responsibilities for the execution of the attached grant application. The organization must maintain or maintain an arrangement for a staffed office with regular office hours on a year-round basis and have systems in place to ensure timely and successful completion of projects outlined in the grant.

Application Checklist

Applicants must provide the following:

- State of Maine Certificate of Incorporation and Articles of Incorporation from the Secretary of State or a letter of determination from the Internal Revenue Service.
- Notice of EIN assigned by the IRS.
- Tax Record from the previous year

- P&L Statement from the previous year
- Organization's Annual Budget
- Certificate of good standing issued within 90 days by the Secretary of State.
- List of Board of Directors with contact information, tenure, and term limits. (Organizations should have on their board a significant number of individuals who are invested in the travel and tourism industry and who are participants in the activities of the organization.)
- Copy of the operating guidelines, organization's by-laws and mission statement. (These should provide for an annual election of officers and directors that allows an opportunity for new members to be voted onto the board.)
- Provide five (5) letters of support for the organization's ability to execute an effective regional marketing plan not to include more than one sitting board member
- Most recent Annual Marketing Plan.
- Brief letter to MOT, signed by an Agency officer stating your organization is prepared to accept the incorporation of "Rider B" attached hereto, in the final contract

APPLICATION EVALUATION

Technical Review - Plans are submitted for an overall technical review. The Technical Review Committee is comprised of MOT Director, MOT staff, at least one (1) representative from the Public & Media Relations Agency, at least one (1) representative from the Advertising Agency and at least one (1) representative from the Department of Economic & Community Development (DECD). This group shall review and score each of the applications.

Only complete plans will be reviewed and scored through a consensus scoring process. Strict attention will be given to the following criteria, listed in order of priority:

- a. **Plan Design:** Does the plan clearly identify the strategies and resources that will result in attainable goals and objectives within a specified time frame? Is there a proven track record for the projects identified? Is the plan in keeping with the Office of Tourism's Five Year Strategic Plan? Does the plan build upon MOT's brand platform of Originality? Does the plan connect to MOT's Annual Marketing Plan?
- b. **Regional Impact:** How does the plan address identified needs of the tourism industry within the impacted region? Will the plan increase local/regional awareness, attract new visitors to the region, maintain repeat visitors, encourage visitors to stay in paid accommodations, spend more, stay longer and/or grow off-season visitation? Does the plan connect to other regionally-focused tourism initiatives? Does the plan have a focus on niche markets specific to the region? Does the plan highlight the region's points of differentiation?

- c. Demonstrate the organization has the staffing capacity to execute the proposed marketing plan.
- d. Financial Review: Does the financial commitment reflect an ability to successfully accomplish all of the defined objectives? Has sufficient effort been made to leverage private sector financial involvement in the plan?
- e. Demonstrated Accounting and Management System: Does the organization have a successful history of an adequate accounting and management system for monitoring the type of plan?
- f. Plan Evaluation: Does the project demonstrate a sound methodology for measuring achievement of the stated project objectives?
- g. Plan Finalization – Based upon feedback gained during the Technical Review process, the MOT will negotiate any final plan modifications directly with the successful DMO's. The finalized plans will then be presented to the Commissioner of DECD for review and approval.

ELIGIBLE PROJECTS

Marketing projects should be focused towards MOT's highest-value consumer segments. The applicant must concentrate media weight and audience coverage in markets of opportunity to maintain repeat visitation and drive more first-time visitation. Projects must drive inquiry and engagement with key vacation planning tools. (See-MTMPP Guidelines: Eligible Project Definitions and Measurements)

The following items are eligible projects:

1. Website: Website Development (Design, Upgrades, Mobilization, Content, SEO)
2. Social Media
3. Public & Media Relations: Familiarization Tours, Media Events, Press Room
4. Domestic & International Leisure & Travel Sales: Travel Trade and Consumer Shows: Registration, Operation, Exhibit Redesign & Upgrade
5. Asset Development: Photography, Video
6. Paid Advertising: Print, Broadcast, Digital, Out-of-Home
7. Joint Marketing Partnerships
8. Fulfillment: Brochures, Guides, Maps & Distribution
9. Professional Development
10. Administrative Expenses

ELIGIBLE PROJECT DEFINITIONS AND MEASUREMENTS

Category –Regional Website

Definition: Digital projects involving site architecture, design, maintenance and hosting necessary for a consumer-focused web presence

Element - Website: Redesigns and Upgrades

Including, but not limited to:

- Techshare
- Platform
- Responsive and/or Mobile Compatibility

Element - Content development

Element – Search Engine Optimization

Measurement: *Google Analytics (9)*

Category - Social Media

Social Media: Direct contact to the consumer through various social media channels and platforms including but not limited to: Facebook, Twitter, Instagram, and YouTube and other social networks.

Element- Content

Element- Social monitoring services

Measurement: Engagement, likes, shares, comments, fans, followers, visits, views, retweets, Google Analytics, Facebook Insights, and expert evaluation

Category - Public Relations

Definition: Media and blogger outreach for the purpose of securing print, broadcast or online coverage. It can include press releases, pitch letters, online media rooms, distribution services and press tours/visits.

Element - Familiarization Trip for Tour Operators and Journalists

(Must be vetted through the MOT)

Definition: Familiarization (Fam) Tours: Hosting an individual or group of travel media or travel trade in your region. The purpose of these tours is to familiarize media and trade with the region. Typically, this involves reduced rate and/or complimentary lodging, meals and access to attractions

Element - Media Events

Definition: Participation in events that allow for contact and interaction with travel/food & wine/lifestyle media.

Including, but not limited to:

- Press Room/Media Kit
- Distribution Services

Measurement: An accounting of media results, advertising equivalency, and/or new product offerings.

Category – Domestic & International Leisure & Travel Sales

Definition: Shows intended to attract regional visitation through personal contact and the distribution of regional tourism information. Expenses can include: Event Registration, Staff travel, Meals & Lodging, Displays, and Exhibitor Fees.

Element – Consumer Travel Shows

Element – Travel Trade Shows

Element – Niche Market Shows/Events

Measurement: *Show attendance, leads collected; materials distributed*

Definition: includes professional photography, videography through the process of photo/video shoots or purchasing stock photos and/or video. All photography should include full, non-exclusive rights for print and online and editorial content.

Element - Professional Photography:

Element - Video

Element – Content

Category - Asset Development

Measurement: An accounting of images, videos, stories and the placement.

Category - Paid Advertising

Definition: Paid advertising refers to any “purchased” space or placement with the purpose of driving both awareness and lead generation/inquiry among target segments,

Element – Print (refers to space advertisements)

Element – Broadcast

- Radio
- Television

Measurement: *Number of placements, distribution and impressions*

Element –Digital advertising

Including, but not limited to:

- Banner Ads
- E-blast Campaigns
- E-marketing
- Native content
- Pay-Per-Click - Google AdWords, Microsoft Ad Center, You Tube, etc.
- Lead Generation

Element – Outdoors “Out of Home” - billboards, taxi, transit, etc.

Measurement: Impressions, Open and Click-Through rates for email, Cost/Impression, Cost/Click, Cost/Email, Google Analytics: (cost/visit, average time on site, bounce rate, percent of new visits, conversions, unique URL for outdoor/out of home advertising)

Category – Joint Marketing Partnerships

Definition: Joint Marketing Projects approved by MOT involve two or more regional contributions to a collaborative effort to attract visitors. Examples: Experience Maritime Maine, CruiseMaine, Maine Sports Commission, MOT Cooperative Marketing Programs

Category - Fulfillment

Definition: The production and distribution of regional marketing materials such as the Regional Visitors Guide, maps, other regionally focused brochures.

Element - Publications

Element – Distribution

Including, but not limited to:

- Direct Mail
- Travel Shows (shipments only – those not attended in person)

Measurement: Distribution through Mailings, VICs, Shows

Category - Professional Development

Definition: This category allots \$5,000 with no match required for the attendance to a nationally recognized marketing conferences by a representative of the RDMO and may be used for registration, travel and other costs related to attendance of the designated conferences . Note: *This funding can only be used in this category at one of the designated conferences and cannot be reallocated to any other project.*

Element: Conference Participation

- ESTO (www.ustravel.org/events/esto)

- DMAI (www.destinationmarketing.org/)

Category – Administrative Expenses

Definition: No more than twenty (20%) of the allocated MTMPP funds can be used for administrative expenses. Administrative expenses may not be built into any other section of the grant. The administrative allowance is intended to help Grantee meet and comply with all of the MTMPP Guidelines.

Measurement: *A full and detailed documentation of these administrative expenses will be required with both the interim and final reports.*

Note: *The MOT has the right to withhold any and/or all administrative monies up to the full 20% allocation if the required eligibility items are not being met.*

CREATIVE REQUIREMENTS

- a. Maine Brand - The word “Maine” shall be prominent in all MTMPP media, in accordance with the design guidelines of the MOT. The proper usage in other venues will be negotiated and pre-approved in writing with the MOT.
- b. Maine Logo - All printed materials, audio visual presentations, films or videos, television commercials, broadcast programs, websites and trade show materials must include the approved MOT logo in accordance with the design guidelines of the MOT.
- c. MOT Website - Include the following: “For additional information on Maine, go to www.visitmaine.com.”

Note: *Failure to comply with these requirements elements will jeopardize payment for that project and future funding.*

MATCHING FUNDS

MTMPP funded projects require every two dollars (\$2) of MTMPP monies be matched by one dollar (\$1) of regional funds. A minimum of fifty-percent (50%) of the regional match must be cash and the remaining balance may be in-kind match. All matching funds, cash and in-kind, must be clearly outlined in both the scope of work and the budget.

- Financial reporting costs are exempt from match requirements.
- If the region has utilized the services of a small business economic development center/corporation, only project related expenses will be allowed as in-kind match.
- Expenditures claimed for projects funded previously will not be allowed as match.
- Approved Joint Marketing Partnerships are exempt from match requirements.

- Administrative expenses, if recorded as part of the 20% Administrative Allocation, are exempt from match requirements.

Note: *The expenses recorded within this 20% allocation cannot be claimed again as in-kind or cash match for the approved projects.*

Definitions:

- **Cash Match:** Cash collected and expended by the region in the process of completing the approved grant projects. This includes money contributed to the region by private organizations, institutions, public agencies, private individuals, etc. Expenditures must be for project related costs and must be tied directly to the projects as outlined in the scope of work.

Note: *Credit for cash match is received when incurred as an actual expenditure. Documentation will be required.*

- **In-kind Match:** In-kind match represents the value of non-cash contributions (donated product and/or service) provided by the region, private organizations, institutions, public agencies, private individuals, etc. The non-cash contributions must be for project related costs and must be tied directly to the projects as outlined in the scope of work.

NOTE: *All in-kind contributions must be documented and may not be credited as in-kind to any other MTMPP elements, projects and/or grants.*

***Joint Marketing Partnership Projects are exempt from regional matching funds.**

EXAMPLE OF MATCH REQUIREMENTS:

MTMPP Total Request - \$130,000

MTMPP Project Funds - \$100,000 (Project = \$130,000 minus 20% (\$25,000) Administrative Allocation and less Professional Development allotment\$5,000) *Note: Other Special Programs through MOT may also qualify for a zero regional match.*

MTMPP Project Funds	Regional Match Required*	Total Program
\$100,000	\$50,000	\$150,000
	Minimum Cash Match (50%) =	\$25,000
	Maximum In-Kind Match (50%) =	<u>\$25,000</u>
	*Regional Match	\$50,000

GENERAL CONTRACTUAL GUIDELINES

CONTRACT PREPARATION

- When the Commissioner of DECD has confirmed the recommendations of the Technical Review Committee, the OT will notify all applicants by letter of their plan status.

- All contracts will be signed for a period of no more than twelve (12) months unless otherwise stipulated in the contract.
- One copy of the contract will be mailed to award recipients for review and signatures. Contracts must be signed by an authorized individual. All copies must be returned to OT.
- Once the contract has been approved by the Division of Purchases, and the monies have been encumbered, the award recipient will be notified that work can begin. OT will send one copy of the approved contract to the award recipient.

Note: Potential awards cannot be obligated or expended until that date.

- All invoicing to the Department will be paid on a reimbursement only basis. The final \$500.00 will be withheld until the final report has been received and approved by the MOT. If not submitted within 90 days the \$500.00 will revert to the regional pool. If applicable, special conditions of funding will be negotiated and outlined.
- Extensions and amendments will be reviewed on an individual basis *but* must be requested by the first Friday of June in the contract year
- The successful completion of the FY 2017 MTMPP program, where applicable, will be a significant consideration for FY 2018 eligibility.

STATE LAWS AND REGULATIONS

Funds awarded must be used in accordance with all applicable state laws and subject to contracting requirements as specified in Rider B of the contract. Grantees are not exempt from paying sales tax. [See Attached Rider B](#)

Online Applications are available at <http://www.motgrants.com>

RIDER B

METHOD OF PAYMENT AND OTHER PROVISIONS

1. **INVOICES AND PAYMENTS** **The Department will pay the provider as follows:** Once the award has been encumbered, the initial 20% Award allocation can be invoiced to the OT; the remaining Award, save the final \$5,000 report-related payment, can be invoiced for draw down payments after the successful completion of the defined projects or project stages. The Department will pay the Provider as follows: within 30 days after receipt of an approved itemized invoice submitted by the Provider upon its usual billing forms or business letterhead. Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds, unless pre-approved in writing by the OT.

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

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

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

4. **DEPARTMENT'S REPRESENTATIVE** The Agreement Administrator shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.

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

Name: Phil Savignano
Title: Senior Tourism Specialist
Address: Maine Office of Tourism – Tel. 624-9809

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

6. **CHANGES IN THE WORK** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.

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

8. **SUBLETTING, ASSIGNMENT OR TRANSFER** The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Agreement

Administrator. No subcontracts or transfer of agreement shall in any case release the Provider of its liability under this Agreement.

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

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

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

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

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

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

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

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

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

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

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

12. **WARRANTY** The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

13. **ACCESS TO RECORDS** As a condition of accepting a contract for services under this section, a contractor must agree to treat all records, other than proprietary information, relating to personal services work performed under the contract as public records under the freedom of access laws to the same extent as if the work were performed directly by the department or

agency. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the contractor and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the contract and information concerning employee and contract oversight and accountability procedures and systems are not proprietary information. The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.

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

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

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

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

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

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

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

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

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

22. **SEVERABILITY** The invalidity or unenforceability of any particular provision or part thereof of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

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

24. **FORCE MAJEURE** The Department may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The Department may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

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

26. **ENTIRE AGREEMENT** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.