



REGIONAL EVALUATION, MEASUREMENT & VERIFICATION FORUM

EM&V Forum Information Access and Confidentiality Policy Final - September 2009

A. Purpose/Objectives

The purpose of this policy is to expand upon the EM&V Forum Operational Guidelines Section 10 regarding Protection of Confidential Information, in order to establish processes and procedures for protecting EM&V Forum participants' confidential and market sensitive information, while also ensuring the accessibility and sharing of Forum products and supporting information where appropriate. The Forum is committed to complying with applicable data protection and privacy laws and respecting Forum participants' intellectual property rights, while also committing to ensuring public access to EM&V information, per the direction of the Forum Steering Committee.

Section 10: Public Access to Forum Materials and Protection of Confidential Information

All Forum materials, with the exceptions noted herein, shall be public information, including studies, results and data used or developed to support the Forum. Exceptions include confidential data such as customer specific data (e.g., used to support evaluation studies or other research projects), contractual bids for Forum projects, and any other data identified as confidential by the Project Committee co-chairs and Steering Committee members.

B. Accessibility to Forum Products and Materials

B.1 Scope

All Forum products and materials will be made accessible to the public, including studies, results and data used or developed to support the Forum that are deemed non-confidential/non-market sensitive information (per Section C below).

B.2 Info Access Guidelines & Procedures

The following processes and procedures will be used to ensure that non-confidential/non-market sensitive information that support or result from the Forum's projects are made public:

1. A determination of what constitutes "market sensitive" information will be made on a project by project basis by NEEP with the project subcommittee and committee co-chairs before project materials and information are made publicly available.
2. Forum project deliverables will be defined in the project Request for Proposal (RFP) and the Scope of Work (SOW), where such deliverables may include non-confidential data gathered through research that support the project findings.
3. Data resulting from Forum Projects will be posted on the Forum's website or will be made available upon request.
4. Data resulting from Forum Projects will be made available in a user friendly format as defined in the RFP and SOW.

C. Protection of Confidential Information

C.1 Scope

Information and data covered by this policy includes all written, verbal and electronic information or data provided by Forum participants to the Forum that is: customer specific, relates to contractual bids for work for the Forum, marked confidential or otherwise determined to contain confidential or sensitive information. Persons bound by the procedures contained in this policy include:

- Forum Participants - Individuals that serve on the Forum Committees, including the Steering Committee and Project Committees, whose represented state agency and/or company provide financial support for the Forum's activities.
- Subscribers - Stakeholders that pay a subscription fee to be formally affiliated with, and informed about, the Forum and its events and developments.
- NEEP staff

C.2 Confidentiality Guidelines & Procedures

1. All aspects of contractual bids, including the name of the bidding party, the terms of the bid and the review process, selection criteria and rankings are confidential during their review process by the relevant project sub-committee and NEEP. This information will be available to all Forum Participants after the bidding process and bidder selection is complete.
2. Any data provided to the Forum for study or project purposes that includes or is identified by the provider as having confidential or market sensitive data shall be respected and not be made public.
3. Customer specific data used to support evaluation studies or other research projects will be considered confidential or sensitive information and will not be made public.
4. All personnel information relating to NEEP's or other Forum Participant's staff, board, and operations, and all processes, procedures, organizational/business affairs, plans and technical information relating to such entity that is of a secret or confidential nature will be considered confidential and sensitive information and will not be made public.
5. A determination of what constitutes "market sensitive" information will be made on a project by project basis by NEEP with the project subcommittee and committee co-chairs before project materials and information are made publicly available.
6. Neither NEEP nor any Forum Participant will disclose to the public or to any third party, or use for any purposes unrelated to the Forum, any of the confidential or sensitive information described above.
7. To the extent it is necessary to enlist third party contractors to further the purposes of the Forum and to reveal confidential or sensitive information to such contractors, Forum Participants and NEEP will require such contractors to sign a Non-Disclosure Agreement substantially in the form of *Attachment A* with respect to the confidential or sensitive information.
8. All EM&V Forum participants, subscribers and third party contractors granted access to the Forum's private websites will be required to agree to a Terms of Use Agreement when logging onto the website for the first time. This agreement will include a confidentiality provision. (*See Attachment B*).

Attachment A

NEEP Professional Services Agreement (*this is standard attachment to all Forum contracts*)

NORTHEAST ENERGY EFFICIENCY PARTNERSHIPS, INC.
And

[Contractor]
[contract number]

THIS AGREEMENT (“Agreement”) is made between Northeast Energy Efficiency Partnerships, Inc. (“NEEP”) and [NAME OF CONTRACTOR] (“Contractor”). In this Agreement NEEP and Contractor are referred to individually as Party and jointly as Parties.

WHEREAS, NEEP, is a 501(c)(3) tax-exempt nonprofit corporation organized for the purposes of steadily increasing energy efficiency in homes, buildings and industry in the Northeast region of the U.S.; and

WHEREAS, the Regional Evaluation, Measurement and Verification Forum (“EM&V Forum”) is a project of NEEP to provide a vehicle for states to develop and support the consistent use of protocols to measure, verify, track and report the energy and demand savings, costs and emission impacts of energy efficiency and other demand-side resources; and

WHEREAS [NAME OF CONTRACTOR] is a for-profit entity that works in the field of energy efficiency, and is willing to provide services in connection with this EM&V Forum project to support the potential adoption of consistent use of EM&V savings and reporting protocols in the region [edit as needed].

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, the Parties hereby agree as follows:

1. Definition of Terms

“Forum Participant” for the purpose of this agreement means entities or organizations providing funding to this Forum Project (the ‘Project’), as described in Attachment A - Scope of Work.

“Site” means office or other location as designated by NEEP for which the Work is intended, to which the Work is to be delivered, or the Work is to be carried out (if not performed at the facility of the Contractor or others).

2. Scope of Services

NEEP shall enter into a contract with [CONTRACTOR NAME] to provide the services and deliverables for this Forum project [TITLE OF PROJECT], as described in Attachment A, Scope of Work. This work product will be owned by NEEP on behalf of the Forum Participants. Neither the scope nor the substance of the services and deliverables to be provided under this Agreement may be modified, altered, revised, increased, or limited except upon the prior, express, and mutual written approval of the Parties. Contractor agrees to meet or exceed the customary standards of care and professionalism expected in Contractor’s industry or area of expertise in performing all services under this Agreement.

3. Compensation and Payment Schedule

As consideration for the services provided by Contractor, NEEP will pay [\$000,000] after satisfactory completion of the work described in Attachment A, Scope of Work, and delivery by Contractor of all products listed in the “Deliverables” section of Attachment A. Contractor will provide monthly reports to NEEP detailing its progress toward achieving the Deliverables, along with information showing

amounts spent to date. The final report will include an invoice for the full amount due. In addition, Contractor shall maintain books, records, and other data compilations pertaining to the performance of services under this Agreement in such detail as shall properly substantiate claims for payment. NEEP agrees to invoice remittance Terms of NET 60 days.

4. Term

This Agreement shall become effective on [Month day,] year and shall conclude on [month day, year].

5. Termination

- a. **Termination Without Cause.** Either Party may terminate this Agreement without cause prior to the scheduled termination date upon providing fourteen (14) days prior written notice to the other Party.
- b. **Termination With Cause.** Either Party may terminate this Agreement upon breach by the other Party of any material provision under this Agreement. For any termination with cause, the terminating Party shall notify the other Party in writing stating with appropriate specificity the grounds for such termination. If the non-terminating Party cures the problem within thirty (30) days of the provision of such notice, termination shall not take effect and the Agreement shall remain in effect.
- c. **Funding Contingency.** Each Party reserves the right to rescind, cancel, or suspend this Agreement if funding is withdrawn by that Party's funding sources for the services being provided under this Agreement. Any such rescission, cancellation, or suspension shall be effective immediately upon the non-terminating Party's receipt of written notice from the terminating Party.

6. Obligations in the Event of Termination

Upon termination, all works, materials, information, protocols, processes, data, results, work product, and other items conceived, created, developed, or produced by Contractor, whether finished or unfinished, under this Agreement ("Works and Materials") shall become the joint property of NEEP and the Contractor, and Contractor shall deliver copies of all such materials to NEEP immediately. NEEP shall compensate Contractor for the value of all unpaid services that have been satisfactorily performed and reasonable reimbursable expenses properly incurred by Contractor by the effective date of termination. Contractor shall submit a final summary report as described in Paragraph 2 above to NEEP within 60 days after the termination date.

7. Relationship Between Parties

Contractor shall at all times be deemed to be an independent contractor. Nothing contained in this Agreement shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent or employer and employee between NEEP and Contractor. Contractor acknowledges and agrees neither it nor any of its officers, directors or employees is an employee of NEEP and that Contractor is responsible for all federal and/or state, and Social Security liability that may result from performance of and compensation for services under this Agreement. NEEP assumes no responsibility for the payment of any wages, benefits, or taxes by, or on behalf of Contractor by reason of this Agreement.

8. Assignment and Subcontracting

NEEP consents to the Contractor's entering into a contract with [NAME OF SUB-CONTRACTOR(S)] for the services and deliverables set out in Attachment A - Scope of Work.

9. Confidentiality

Contractor acknowledges that under this Agreement it may receive or be shown "Confidential Information" of NEEP, Forum Participants and/or Forum Participants' customers. Contractor promises not to disclose any "Confidential Information" without NEEP's prior written consent, and shall sign a copy of the Non-Disclosure Agreement attached to this Agreement at Attachment B. "Confidential Information" includes but is not limited to all information marked confidential by NEEP and/or Forum Participants, including: any personnel information relating to NEEP's staff, board, and operations; all intellectual property, proprietary information, and customer specific data used to support Forum research; and all processes, procedures, organizational/business affairs, plans and technical information that is of a secret or confidential nature as identified by NEEP and/or Forum Participants. Contractor will require any permitted sub-contractors it engages in order to carry out its work under this Agreement to sign an identical Non-Disclosure Agreement to the one in Attachment B.

10. Representations and Warranties

Contractor represents and warrants that it has the legal right and authority to enter into this Agreement and that its performance hereunder will not conflict with or violate any commitment, agreement, or understanding it has to or with any other person or entity. Contractor further warrants the suitability of the services provided hereunder for the uses intended under this Agreement. Contractor acknowledges that NEEP is a tax-exempt 501(c)(3) organization subject to certain restrictions and limitations and agrees that it will not engage in any act that would negatively impact such status.

11. Insurance

Contractor will maintain and keep in force throughout the period of this Agreement a policy of general liability insurance in the amount of \$1,000,000. Contractor will also maintain and keep in force such other comprehensive and/or umbrella insurance coverage that will fully satisfy the indemnification terms under this Agreement as set forth herein.

Prior to the commencement of Work under the Contract Documents, Contractor shall provide NEEP with certificates of insurance as evidence of the above insurance requirements. Such certificates shall name NEEP as an additional insured party.

12. Indemnification

(a) NEEP will indemnify and hold harmless the Contractor and its employees from and against any and all loss, cost, damage, or expense of any kind and nature (including without limitation, court costs, expenses and reasonable attorneys' fees) arising out of injury to person(s) or damage to property (including, without limitation, property of the Contractor, and its employees, agents, licensees and representatives) in any manner caused by the negligent acts or omissions of NEEP.

(b) The Contractor will indemnify and hold harmless NEEP and its employees from and against any and all loss, cost, damage, or expense of any kind and nature (including, without limitation, court costs, expenses, and reasonable attorneys' fees) arising out of injury to persons or damage to property (including, without limitation, property of NEEP and its employees, agents, licensees, and representatives) in any manner caused by the negligent acts or omissions of the Contractor or others with whom the Contractor subcontracts in the performance of its work pursuant to this Contract to the extent of the Contractor's or subcontractor's proportionate negligence, if any.

13. Background Checks

(a) With respect to any Contractor employee who (a) have badged access to a Forum Participant's Site; or (b) have access to a Forum Participant's information technology system or data contained therein, Contractor shall perform, prior to placement of, and after securing appropriate written authorization from, the applicable Contractor Personnel, a background screen consistent with the table set forth below. In addition, Contractor shall verify evidence of the identity and employment eligibility of each

Contractor's personnel under U.S. immigration laws. This shall include compliance with the U.S. Citizenship and Immigration Service's I-9 process. Contractor shall use its best efforts to ensure that none of its Contractor Personnel pose a threat to the safe working environment at any Forum Participant's Site or a threat to the integrity of NEEP's business operations. NEEP shall have the right to audit the Contractor's compliance with these requirements including by requiring Contractor to provide an officer's certificate certifying such compliance, at any time and from time to time upon reasonable notice.

Level	Function	Checks Required	Disqualifiers
1.	Badged Access to Site	-- SSN Verification -- Federal, State, County criminal history	-- Name & SSN do not match -- No record of name or SSN -- Felony convictions - last 7 years -- Conviction for any crime against persons in the past three years
2.	IT System Access or data contained therein	-- Level 1 and Level 2 check as appropriate, plus: -- Education verification -- Professional certification / Credential verification -- Credit history	-- Education not verified -- Credentials not verified -- Adverse credit report

14. Notice of Completion - Verification

Contractor shall notify NEEP when it has completed the Work. NEEP will inspect and accept or reject the Work as promptly as practicable after delivery, except as otherwise provided in the Contract Documents. NEEP shall inspect the Work and notify Contractor in writing either that: (1) the Work is satisfactory and Contractor has achieved Final Acceptance; or (2) all or parts of the Work do not conform to the Contract Documents. Contractor shall correct such non-conforming Work to suit NEEP's schedule, at Contractor's expense. NEEP's failure to inspect and accept or reject the Work shall not relieve Contractor from responsibility for Work which does not comply with the Contract Documents.

15. Amendment

No amendment, modification, extension, or rescission of any term or provision of this Agreement shall be effective unless agreed upon in writing by both Parties.

16. Governing Law

Any actions arising out of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts and shall be brought in a state or federal court within Massachusetts, which shall have exclusive jurisdiction thereof.

17. Notices

Any notice required to be given or otherwise given pursuant to this Agreement shall be in writing and shall be hand delivered, mailed by U.S. mail, or sent by recognized overnight courier service to:

To NEEP: James L. Godkins
Director of Financial and Administrative Services
Northeast Energy Efficiency Partnerships, Inc.
5 Militia Drive
Lexington, Massachusetts 02421-4713

To Contractor: **CONTRACTOR NAME OR COMPANY NAME**
[STREET ADDRESS]
CITY, STATE ZIP CODE

18. Severability

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

19. Waiver

The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

Neither NEEP's payment of Contractor's final invoice issued in respect of the Work nor its verification that the Work has been completed shall be construed as a waiver of any of Contractor's warranty obligations or as acceptance of any deficient Work not discovered prior to such payment or during such verification.

20. Entire Agreement

This Agreement and all attachments hereto contain the entire agreement of the Parties with respect to the matters covered herein and cannot be modified, except in writing signed by both Parties. IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives on the day and year set forth below.

ACCEPTED AND AGREED TO BY:

NORTHEAST ENERGY EFFICIENCY PARTNERSHIPS, INC.

Name: Susan E. Coakley
Title: Executive Director
Date: Month Day, 20XX

NAME OF CONTRACTOR

Name:
Title:
Date: Month Day, 20XX

**Attachment B (to NEEP Terms of Services Agreement)
NEEP Non-Disclosure Agreement**

The undersigned, _____, as a(n) _____ will be performing work under a Contract dated 20XX, between Northeast Energy Efficiency Partnerships ("NEEP") and _____ ("Contractor"/"Subcontractor"), and as a condition of such Contract agrees as follows:

1. The Contractor/Subcontractor shall not, at any time while carrying out work under the Contract or for ten years after completion thereof, in any form or manner, either directly or indirectly, divulge, disclose, or communicate to any person, firm, or corporation any Confidential Information as defined herein. "Confidential Information" includes, but is not limited to, all information marked confidential by NEEP and/or Forum Participants, including: any personnel information relating to NEEP's staff, board, and operations; all intellectual property, proprietary information, and customer specific data used to support Forum research; and all processes, procedures, organizational/business affairs, plans and technical information that is of a secret or confidential nature as identified by NEEP and/or Forum Participants, and which is received in the course of the work being performed under the Contract.
2. Confidential information shall not include information that:
 - a. Is already known to the Contractor and was properly obtained by the Contractor prior to the effective date of this Agreement;
 - b. Is already in the public domain or becomes available to the public other than through a negligent act or omission or willful misconduct of the Contractor;
 - c. Is acquired in good faith from a third party and at the time of acquisition the Contractor had no knowledge or reason to believe that such information was wrongfully obtained or disclosed by the third party; or
 - d. Is independently developed by the Contractor from information not defined as "Confidential Information" in this Agreement, as evidenced by Contractor's written records.
3. The undersigned may disclose Confidential Information to his/her employees, partners, or permitted sub-contractors or agents if and only if:
 - a. Such disclosure is necessary for the undersigned to perform his/her duties under the Contract;
 - b. The party to whom Confidential Information will be disclosed has executed and delivered to NEEP a Non-Disclosure Agreement in the form of this document; and
 - c. The undersigned has received written permission from NEEP to make such disclosure.
4. All records pertaining to the Confidential Information, whether developed by the undersigned or others, are and shall remain the property of NEEP.
5. In the event that the undersigned fails to fulfill the above obligations or in the event that such appears to be an imminent possibility, NEEP shall be entitled to all legal and equitable remedies afforded it by law as a result thereof and may, in addition to any and all other forms of relief, recover from the undersigned all reasonable costs and attorneys' fees encountered by it in seeking any such remedy.
6. All terms and provisions in this document shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. If any terms or provision of this document or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder shall not be affected thereby, and each provision shall be valid and be enforced to the fullest extent permitted by law.

Accepted and agreed to by:

Name of Contractor/Subcontractor and Title: _____

Address: _____

Date: Month Day, 20XX

Attachment B

EM&V Forum Web Site Terms of Use Agreement (Effective 10-1-2009, launch date of new NEEP website)

Welcome to the Regional EM&V Forum's (Forum) Web site. By using our site, you are agreeing to comply and be bound by the following terms of use, which include the Forum's Confidentiality Policy. Please review the following terms carefully. If you do not agree to these terms, you will not be granted access to the website. The term "Forum", "us", "we" or "our" refers to the Northeast Energy Partnership's Regional EM&V Forum, the owner of the Web site. The term "you" refers to the user or viewer of our Web site. Users or viewers include Forum Participants, Subscribers, observers and Forum third party contractors. The term "Forum Participant" refers to individuals that serve on the Forum Committees, including the Steering Committee and Project Committees, whose representative state agency and/or company provides financial support for the Forum's activities. The term "Subscribers" refers to stakeholders that pay a subscription fee to be formally affiliated with, and informed about, the Forum and its events and developments. The term "observers" refers to other Forum stakeholders who may attend or participate in Forum meetings and activities but do not participate in Forum decision making. The term "Forum third party contractors" refers to persons with whom the Forum has entered into a contract to provide project related services or to perform project related studies.

Acceptance of Agreement

You agree to the terms and conditions outlined in this Terms of Use Agreement ("Agreement") with respect to our site ("the Site"). This Agreement may be amended at any time by us from time to time without specific notice to you. The latest Agreement will be posted on the Site, and you should review this Agreement prior to using the Site.

Limited license; Permitted Uses

You are granted a limited, non-exclusive, non-transferable, revocable license to access the Forum's web site in strict accordance with this Agreement solely for your non-commercial needs as a Forum participant, Subscriber or a Forum third party contractor provided that you comply with all confidentiality requirements contained herein. The foregoing limited license shall not be construed as conferring any right in any copyright or other intellectual property right in the content of this web site.

Restrictions and Prohibition on Use

Your access to and use of the site as well as the information, materials or documents therein, provided or available to you as a Forum participant, subscriber, or third party contractor (collectively defined as "Content" or "Materials") is subject to the restrictions and prohibitions on use in the Confidentiality policy below.

Users Commitment to Maintain Confidentiality

As a User granted access to the EM&V Forum website, you acknowledge that you may receive or be shown "Confidential Information" of NEEP and/or the Forum Participants. "Confidential Information" includes, but is not limited to, any customer specific research data supplied by NEEP and/or Forum participants and all information marked confidential by NEEP and/or the Forum participants. It also includes all personnel information relating to NEEP's or other Forum Participant's staff, board, and operations, and all processes, procedures, organizational/business affairs, plans and technical information relating to such entity that is of a secret or confidential nature. You agree that you will not, in any form or manner, either directly or indirectly, divulge, disclose, or communicate to any person, firm, or corporation any Confidential Information as defined herein without prior written consent.

Limitation of Liability

Except where prohibited by law, in no event will the EM&V Forum or NEEP be liable to you for any indirect, consequential, exemplary, incidental or punitive damages, including lost profits, arising from the use of the Site.

Indemnity

You agree to indemnify and hold NEEP, its officers, directors, agents and affiliates, harmless from any demands, loss, liability, claims or expenses (including attorneys' fees), made against NEEP by any third party due to or arising out of or in connection with your use of the Site or violation of the Confidentiality provisions in these Terms of Use.

Violation of These Terms of Use

You agree that NEEP may, in its sole discretion and without prior notice, terminate your access to the Site and/or block your future access to the Site if it determines that you have violated these Terms of Use. You also agree that NEEP may take legal action against you as a result of your violation of these Terms of Use, and will be entitled to recover from you, and you agree to pay, all reasonable attorneys' fees and costs of such action, in addition to any other relief, including injunctive relief, granted to NEEP. You agree that NEEP will not be liable to you or to any third party for termination of your access to the Site as a result of any violation of these Terms of Use.

By selecting yes, you acknowledge that you have read the Terms of Use Agreement and agree to abide by all the policies defined therein.