



REGIONAL EVALUATION, MEASUREMENT AND  
VERIFICATION FORUM ("EM&V FORUM")

CONTRACTOR TERMS & CONDITIONS (6/9/11 Version)

1. DEFINITION OF TERMS

Defined Terms. For purposes of these Terms and Conditions and as used in this Agreement and all related Purchase Orders issued hereunder incorporating these Terms and Conditions, the following commonly used terms are defined as follows:

- 1.1 *"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 - Forum Participants
- 1.2 *"Company"* shall mean "NEEP" or one of the "Forum Participants" that will contract directly with the Contractor for the Project.
- 1.3 *"Site"* means office or other location as designated by Company for which the Project is intended, to which the Project is to be delivered, or the Project is to be carried out (if not performed at the facility of the Contractor or others).
- 1.4 *"Purchase Order"* - Purchase Orders may be issued by Company for services from Contractor including all documents therein designated as being a part of this Agreement and all amendments thereto ("Amendments"). This Agreement and all related Purchase Orders issued hereunder constitutes the entire agreement between Company and Contractor. The Purchase Order shall reference the terms and conditions of this Agreement and any Supplemental Conditions between the parties.
- 1.5 *"Contractor"* - The business entity (firm or individual) identified as such in this Agreement and all related Purchase Orders issued hereunder and their legally appointed representatives, to the extent such representation is approved by Company. Contractor shall also be responsible for cascading all requirements of this Agreement to their subcontractors performing under the provisions of this Agreement.
- 1.6 *"Project"* - In its totality, the complete scope of work to be performed and provided as defined by Company and agreed to by Contractor for a specified period of time and cost.
- 1.7 *"Subcontractor"* - Any business entity (firm or individual) regardless of tier, which the Contractor may retain during the term of this Agreement to provide services in support of the project. Contractor shall remain fully responsible for all such services provided by its Subcontractor(s) of any tier.
- 1.8 *"Agreement"* - The "Agreement" consists of a binding document between Company and Contractor encompassing the terms and conditions set forth herein and agreed to by the parties executed under separate cover. These terms and conditions will apply to either NEEP, acting on behalf of the Forum Participants, or the Forum Participant(s) contracting directly with the Contractor.

2. PURCHASE ORDERS



- 2.1 Company shall provide and Contractor shall accept compensation for the Project in accordance with the terms of this Agreement and all related Purchase Orders that may be issued by the Company, and any changes thereto.
- 2.2 Any changes in the Price, either to adjust for changes in the estimated costs or for other cost elements applicable to the Project, shall be incorporated into the Purchase Order, and this Agreement. Company will not compensate the Contractor for amounts in excess of the Agreement Price.
- 2.3 Contractor shall be liable for and pay all taxes, contributions and penalties, including interest thereon, that are required or imposed by law in connection with the Project, including, but not limited to, federal, state or local sales, use, excise, consumer, employment (including, but not limited to, FICA, pension obligations and fees), unemployment compensation, workers' compensation, old age retirement benefits, life pensions, annuities and similar taxes or benefits, which may now or hereafter be imposed by law or collective bargaining agreements applicable to labor, services, goods or materials with respect to performance of the Project.
  - 2.3.1 Contractor shall indemnify, defend and save harmless Company, its affiliates, officers, directors, employees, agents, successors and assigns, from and against any and all liability for taxes, contributions and penalties, including the interest thereon, resulting from any Purchase Order(s) issued in accordance with this Agreement, for the services performed thereunder.
  - 2.3.2 If Contractor fails to pay said taxes, contributions and penalties, and interest thereon, Company shall have the right, but shall not be obligated, to pay the same. Contractor agrees to reimburse Company for all taxes, contributions and penalties, including interest thereon, assessed against Contractor and paid by Company upon demand or at the same time that final payment is due, at the Company sole option, in accordance with this Agreement.

### 3. INVOICING

- 3.1 Contractor shall submit invoice(s) in accordance with the Agreement Price and all related Purchase Orders issued under this Agreement issued by Company, and shall include and be supported by documentation, explanation and any other information necessary to substantiate, to Company satisfaction, all amounts being invoiced.
- 3.2 Each invoice shall reference Company Purchase Order Number if one is issued.
- 3.3 For Professional Hourly Rate Purchase Orders, Contractor shall submit, on a monthly basis, its invoice applicable to reimbursable costs, in accordance with the Scope of Work and Purchase Order(s), for services satisfactorily performed during the previous month.
- 3.4 Fixed price Agreements, or Agreements on which fixed amounts of compensation are due based on milestone achievements or deliverables, shall be invoiced by the Contractor upon completion of such Services satisfactory to Company.



- 3.5 Company will pay the Contractor Net Sixty (60) days from receipt of an acceptable invoice. Unacceptable invoices may, at Company option, be adjusted and paid as adjusted, or returned to the Contractor for correction and re-submittal.
- 3.6 Upon completion of the Contractor's Services to Company satisfaction pursuant to the "Schedules" established by Company, Contractor shall submit its final invoice marked "Final Invoice" for all Project work performed. The final invoice, in addition to billing for any and all final period costs, shall summarize all previous invoices and payments made for the Project and indicate the total final Project amount. Company will pay Contractor for all final approved costs not in excess of the prices established in this Agreement.

#### 4. TERMINATION

- 4.1 **Termination Without Cause.** Company may, at any time for any reason, by written notice to the Contractor, terminate, in whole or in part, of this Agreement regarding Contractor's performance hereunder. Such termination shall be effective upon the date set forth in the written notice and, upon receipt of said notice, the Contractor immediately shall turn over and deliver to Company all technical data and other information and materials related to the terminated Project which are within the Contractor's possession or control. The Contractor understands and agrees that, in the event it fails or refuses to comply with the turnover and delivery obligations set forth herein, the Contractor shall not be entitled to any amounts due and owing as of the date of termination for services previously rendered under this Agreement, as well as any amounts otherwise payable hereunder for termination costs until such turnover has been fully complied with by the Contractor.
- 4.2 Upon termination hereunder, Company shall pay 1) all amounts due and owing up to the effective date of termination, and 2) a reasonable amount, mutually agreed upon between Company and the Contractor, representing the Contractor's costs and expenses incurred as a result of the termination. Such amounts shall in no event include an item or claim for loss of anticipated profit. Further, in no event shall the aggregate payments to Contractor exceed the Agreement Price.
- 4.3 **Termination With Cause.** Either Party may terminate the Agreement upon breach by the other Party of any material provision under the 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.
- 4.4 If the Project to be done shall be abandoned by the Contractor, or if the Contractor assigns or subcontracts all or any part of this Agreement without Company's previously obtained written consent, or if the Contractor loses control of the Project from any cause, except for force majeure events, or if the Contractor refuses, or neglects to provide sufficient and properly skilled or other labor, or fails in any respect to prosecute the Project with diligence, or if the Contractor is violating any of the conditions or covenants of this Agreement, or it is not executing the Project in good faith, or is not executing or performing the Project on schedule, or should Contractor become insolvent, Company may, by written notice to the Contractor, terminate, in whole or in part, this Agreement, or the Contractor's performance of Project hereunder, or both. Such



termination will be effective upon the date set forth in the written notice and, upon receipt of said notice, the Contractor immediately shall turn over and deliver to Company all technical data and other information and material relating to the terminated Project which are within the Contractor's possession or control. The Contractor understands and agrees that, in the event the Contractor fails or refuses to comply with the turnover and delivery obligations set forth herein, the Contractor shall not be entitled to any amounts due and owing as of the date of termination for services previously rendered under this Agreement until such turnover has been fully complied with, as determined solely by Company.

- 4.5 Upon termination for default, Company may take over the terminated Project and prosecute the same to completion. In such event, the Contractor and its insurers shall be liable to Company for all direct transitional administrative costs and expenses incurred by Company to engage another Contractor and for all costs to complete the said terminated Project.
- 4.6 The Contractor's compensation in the event of termination for default shall be limited to the amounts for services rendered up to the date of termination. No amount shall be paid or payable by Company for the Contractor's termination costs, including but not limited to demobilization costs, costs associated with the transfer or termination of personnel, or loss of anticipated profit
- 4.7 **Funding Contingency.** Company reserves the right to rescind, cancel, or suspend the Agreement if funding is withdrawn by Company's funding sources for the services being provided under the Agreement. Any such rescission, cancellation, or suspension shall be effective immediately upon the Contractor's receipt of written notice from Company and the Company will have no further obligation to the Contractor.

## 5. OBLIGATIONS IN THE EVENT OF TERMINATION

- 5.1 Upon termination, all Projects, materials, information, protocols, processes, data, results, Project product, and other items conceived, created, developed, or produced by Contractor, whether finished or unfinished, under this Agreement ("Projects and Materials") shall become the joint property of Company and the Contractor, and Contractor shall deliver copies of all such materials to Company immediately. Company 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 this Agreements Scope of Project to Company within 60 days after the termination date.

## 6. RELATIONSHIP BETWEEN COMPANY AND CONTRACTOR

- 6.1 Contractor shall at all times be deemed to be an independent Contractor. Neither Contractor nor its Subcontractor, nor the employees of either, shall be deemed to be the servants, employees, or agents of Company. 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 Company and Contractor. Contractor acknowledges and agrees neither it nor any of its officers, directors or employees is an employee of Company 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. Company assumes no responsibility for the payment of any wages, benefits, or taxes by, or on behalf of Contractor by reason of this Agreement.

## 7. ASSIGNMENT AND SUBCONTRACTING

- 7.1 Contractor shall not assign any part of this Agreement, nor subcontract any portion of this Project, nor assign any moneys payable under this Agreement, without first obtaining the written consent of Company. Any assignment or subcontracting by Contractor or its Subcontractor without written consent of Company shall be considered null and void from inception. Company authorized assignments or subcontracting shall not relieve Contractor of the responsibility for full compliance with the requirements of this Agreement.

## 8. AUDIT AND MAINTENANCE OF RECORDS

- 8.1 Company reserve the right at any time, and at Company expense, to audit the Contractor's books and records at the locations where such books and records are maintained insofar as they pertain to charges invoiced to Company, as a basis for any claim, or any other costs pertinent to Services provided under this Agreement. Such audits may be performed by Company employees or by professional auditing firms or both. Audits of charges invoiced may include, but shall not be limited to, verification of hours and the position job titles and pay levels of Contractor's employee charges, subcontractor and materials invoices and evidence of business expenses reimbursed. Any discrepancy, which Company alleges to exist will be brought to Contractor's attention in order to enable Contractor to investigate the facts. If Company agrees that a discrepancy exists, an adjustment will be made on the next applicable invoice issued, or if no further invoice is likely, Contractor will issue a refund to Company within thirty (30) days thereafter.

## 9. REPRESENTATIONS AND WARRANTIES

- 9.1 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 the Agreement.
- 9.2 The Contractor shall ensure that all services meet or exceed the level of quality specified in this Agreement or if not specified of the best quality appropriate for the intended purpose. As requested, the Contractor shall demonstrate to Company that the Project performed is in compliance with the requirements specified in this Agreement. The Contractor shall make records available for Company's verification of this compliance.
- 9.3 The Contractor shall use its best efforts and ensure that all services are performed with the highest degree of skill and care required by customarily accepted good and sound professional practices and procedures. The Contractor, in supplying such services under this Agreement, guarantees that the Project will be as required by this Agreement; will be accurate, correct and fit to serve its intended function as stated in this Agreement, or as may be reasonably implied. The Contractor further guarantees its performance of services will comply with applicable codes, standards and governmental regulations having jurisdiction over such Project.



9.4 In the event the Contractor fails to meet the foregoing requirements, the Contractor shall be liable to Company to:

- correctly re-perform, at its sole cost and expense, those services which failed to meet such degree of skill and care;
- assume the cost of repairing, replacing or correcting defective or damaged equipment, materials or structures purchased or built in reliance upon designs, plans, drawings or specifications which fail to meet such degree of skill and care or perform its/their intended function.

## 10. TITLE TO PLANS AND SPECIFICATIONS

10.1 Any information, analyses, conclusions, reports, drawings, and specifications prepared by Contractor pursuant to this Agreement shall be the sole property of Company. Company may use information contained therein for any purpose whatsoever, including construction, maintenance, operation, modification, replacement, and repair. Contractor may retain a copy of such documents for its internal use only, but may not release any information contained therein without prior written consent of Company.

## 11. PATENT INFRINGEMENT AND INDEMNIFICATION

11.1 All royalties and fees for patents covering materials, articles, apparatus, devices, equipment or processes used in the Project shall be included in the Agreement Price. Contractor shall satisfy all demands that may be made at any time for such royalties or fees.

11.2 The Contractor guarantees that all Project information and material provided by the Contractor under this Agreement shall be free from claims of patent, copyright, and/or trademark infringement.

11.3 The Contractor shall indemnify, hold harmless, and, at Company's option, defend Company and its affiliates and their officers, directors, employees, agents, servants, and assigns from and against all claims, losses, costs, damages, suits, actions, and proceedings for actual or alleged infringement of any patent, copyright, or trademark resulting from any sale, use, or manufacture of any item delivered hereunder, and pay and discharge all judgments, decrees, and awards rendered therein and bear all expenses and legal fees associated therewith.

11.4 In the event of any adjudication that this Agreement, or any part thereof, infringes any patent, copyright, or trademark or in the event that the use of any part of the Project is enjoined as a result of any claim that the Project infringes any patent, copyright, or trademark the Contractor shall, at its sole expense, either: a) procure for Company the right to continued use, or b) without impairing performance capability, replace the infringed Project with substantially equivalent noninfringing Project, or modify such Project so it can become noninfringing.



- 11.5 The Contractor shall obtain from its Subcontractor, for Company's benefit, agreements similar to those contained in this Section 11.0.
- 11.6 Notwithstanding any other provision of this Agreement, this Section 11.0 shall survive the termination or expiration of this Agreement.

## 12. INVENTIONS, PATENTS AND COPYRIGHTS

- 12.1 Any and all Project materials, expressions, inventions, ideas, discoveries, improvements or developments (whether or not patentable), as well as all copyrights, patents or trademarks thereof, that may be conceived or made by the Contractor or Contractor's partner(s), employee(s), agent(s), vendor(s), Contractor(s), supplier(s) or any other party employed by Contractor, or Subcontractor to Contractor of any tier, to satisfy its obligation under this Agreement shall be Project made for hire and shall be deemed the property of Company. All such Project materials, expressions, inventions, ideas, discoveries, improvements or developments, as well as all copyrightable expressions thereof, shall be deemed to fit into one or more of the specifically enumerated categories of Projects contained in 17 U.S.C. Section 101 *et seq.*, and any subsequent revisions thereof. The Contractor and/or Contractor's partner(s), employee(s), agent(s), vendor(s), Contractor(s), supplier(s), or any other party employed by Contractor, or Subcontractor to Contractor of any tier, to satisfy its obligation under this Agreement shall promptly furnish Company with complete information, including, without limitation, a written description thereof giving the date of the Project, invention or expression and naming the inventors or authors and others involved in the development or writing of the Project, invention or expression. Company shall have the sole power to determine whether or not and in which countries and jurisdictions patent application shall be filed or copyrights registered and to determine the disposition of title to and rights in any Projects, expressions, inventions, ideas, discoveries, improvements or developments and in any United States and foreign patent applications, patents or copyrights that may result. Memoranda, notes and experimental Projects, descriptions, diagrams and other data generated in performance of the Project pertaining to any and all Projects, expressions, inventions, ideas, discoveries, improvements and developments covered by this Agreement shall be available at reasonable times to Company.
- 12.2 Contractor shall assist Company in the implementation of this Section 12.0 by obtaining and providing detailed written descriptions of each invention, idea, discovery or expression sufficient for filing patent or copyright applications, by providing an evaluation of the patentability or copyrightability of each disclosure, by assisting Company in the prosecution of patent and copyright applications, and by executing or having executed by appropriate persons any and all documents which may be necessary or desirable to cause title in such inventions, ideas, discoveries, or expressions to vest with Company. The cost of such assistance shall be considered separate and distinct and shall be mutually agreed upon between Company and Contractor.
- 12.3 In order to further effectuate the provisions of this Section 12.0, Contractor agrees to deliver to Company either 1) agreements in the form of Appendix "A" hereto, "Non-Disclosure Agreement", executed by Contractor and each partner, agent, employee, vendor, Contractor, Subcontractor and any other party employed by Contractor to satisfy its obligations under this Agreement, and any employee of any of the foregoing Company,



or 2) a written statement from Contractor representing and warranting that it has in place written, binding agreements in the form of Attachment B (Non Disclosure) for any and all entities and persons it will utilize to satisfy its obligations under this Agreement.

**13. INSURANCE**

13.1 Prior to the commencement of Project under the Contract Documents, Contractor shall provide Company with certificates of insurance as evidence of the insurance requirements below. Such certificates shall name Company as an additional insured party, including its affiliates and subsidiaries.

13.2 Such certificates, and any renewals or extensions thereof, shall provide that at least thirty (30) days prior written notice shall be given to Company in the event of any cancellation or diminution of coverage and shall outline the amount of deductibles or self-insured retentions which shall be for the account of Contractor. Such deductibles or self-insured retentions shall not exceed \$100,000 unless agreed to in writing by Company.

13.3 Unless otherwise specified in this Agreement, minimum insurance requirements are as follows:

13.4 Workers' Compensation and Employer's Liability insurance coverage shall be provided in accordance with the Workers' Compensation laws of the states wherein operations under this Agreement are to be carried on. Minimum limit for Employer's Liability coverage is \$500,000 each accident. Wherever the exposure is present, coverage under the U.S. Longshoremen's and Harbor Workers' Compensation Act or Jones Act shall be required.

13.5 Commercial General Liability, covering all operations to be performed under this Agreement, with minimum limits of:

Bodily Injury  
and  
Property Damage combined single limit \$1,000,000 per occurrence.

This policy shall include Contractual Liability and shall include the Company as an additional insured for all coverages therein.

13.6 Automobile Liability, covering all owned, non-owned and hired vehicles used in connection with the Services provided under this Agreement with minimum limits of:

Bodily Injury  
and  
Property Damage combined single limit \$1,000,000

13.7 Umbrella Liability Insurance with coverage for Commercial General Liability, Commercial Automobile Liability and Employer's Liability with a minimum liability limit of in the amount of \$1,000,000 per occurrence

13.8 Contractor shall provide Professional Liability coverage with a limit of liability of the greater of \$500,000 or the value of this Agreement.



- 13.9 Self-Insurance: Proof of qualification as a qualified self-insurer, if approved in advance in writing by Company, will be acceptable in lieu of securing and maintaining one or more of the coverage's required in this Insurance Section.
- 13.10 Contractor shall waive all rights of recovery against Company and its affiliates and subsidiaries for any loss or damage covered under those policies referenced in this insurance provision, or for any required coverage that may be self-insured by Contractor.
- 13.11 Reservation of Rights - If any policy should be canceled before Final Payment by Company to the Contractor and the Contractor fails immediately to procure other insurance as specified, Company reserves the right to procure such insurance and to deduct the cost thereof from any sum due the Contractor under this Agreement.
- 13.12 Contractor shall furnish Company with copies of any incident report(s), including those sent to Contractor's insurance carrier(s), covering incidents or accidents occurring in connection with or as a result of the performance of the Project performed under this Agreement.
- 13.13 Contractor represents that it has full policy limits available and shall notify Company in writing when coverage's required herein have been reduced as a result of claim payments, expenses, or both.
- 13.14 Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from its services under this Agreement, or limiting, diminishing, or waiving Contractor's obligation to indemnify, defend and save harmless Company in accordance with this Agreement.

#### 14. INDEMNIFICATION

- 14.1 To the fullest extent allowed by law, the Contractor shall indemnify, defend, and save harmless Company, its affiliates, officers, directors, employees, agents, successors and assigns (collectively, the "Indemnified Company"), from any loss, damage, liability, cost, suit, charge, expense, or cause of action, whether unconditionally certain or otherwise, as they exist on the effective date of this Agreement, or arise at any time thereafter, (including but not limited to fees and disbursements of counsel incurred by an Indemnified Party in any action or proceeding between Contractor and an Indemnified Party or between an Indemnified Party and any third party or otherwise) arising out of any damage or injury to property of Company, Contractor and/or third party (including real property, personal property and environmental damages), persons (including injuries resulting in death), or economic damages, directly or indirectly caused by or arising out of or in any way connected with this Agreement, or the Project performed thereunder, or any equipment, property or facilities used by the Contractor, its agents, employees, Subcontractors and suppliers. Company shall not be indemnified or held harmless against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of Company.
- 14.2 Contractor shall take prompt action to defend and indemnify the Indemnified Company against claims, actual or threatened, but in no event later than notice by Company to Contractor of the service of summons, complaint, petition or other service of process against Company alleging damage, injury, liability, or expenses attributed in any way to



this Agreement, the Project, or the acts, fault, negligence, equipment, facilities, personnel, or property of the Contractor, its agents, employees, Subcontractors or suppliers. Contractor shall defend any such claim or threatened claim, including as applicable, engagement of legal counsel, to respond to, defend, settle, or compromise any claim or threatened claim. Furthermore, Contractor understands and agrees it is responsible for any and all costs and expenses incurred by Company to enforce this indemnification provision. The obligations set forth herein shall survive completion of the Project and termination of this Agreement for any reason.

- 14.3 Contractor intends that its indemnity obligation to each party indemnified herein for claims related to or brought by anyone directly or indirectly employed by Contractor or Contractor's subcontractors shall not be limited in any way by any provision of any workers' compensation act, disability benefits act or other employee benefit act, and Contractor hereby waives immunity under such acts to the extent such acts would bar recovery under, or full enforcement of, Contractor's indemnity obligation.

## 15. BACKGROUND CHECKS

- 15.1 Contractor shall be wholly and solely responsible for all acts of its personnel while engaged in the Project. Any illegal acts, including but not limited to terrorism affecting the property and personnel of the Company, by Contractor or Subcontractor shall be considered grounds for finding the Contractor in default and terminating this Agreement and all affected Purchases Orders issued by Company in accordance with Article 4, in addition to other rights or remedies available Company under applicable law.
- 15.2 Additional Background Check requirements may be required by the Forum Participants as outlined under separate cover.

## 16. NOTICE OF COMPLETION - VERIFICATION

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

## 17. FORCE MAJEURE

- 17.1 Any delay of either party in the performance of its required obligations hereunder shall be excused if and to the extent caused by unprecedented weather conditions, fire, explosion, riot, war, strike by Company or its affiliates' employees, court injunction or order, federal and/or state law or regulation, or order by any federal or state regulatory agency, but only to the extent that: 1) such events are beyond the reasonable control of the party affected, 2) such events were unforeseeable by the affected party and the effects were beyond its reasonable efforts to prevent, avoid or mitigate, 3) said affected party uses every



reasonable effort to prevent, avoid or mitigate the effects, 4) prompt written notice of such delay be given by such affected party to the other; and 5) the party affected uses its best efforts to remedy the resulting effects in the shortest practicable time. Upon receipt of said notice, if necessary, the time for performing the affected activities shall be extended for a period of time reasonably necessary to overcome the effect of such delays, such extension shall be the sole remedy and compensation for each force majeure event. Notwithstanding the foregoing, Company shall have the right to terminate this Agreement and all related Purchase Orders issued hereunder.

## 18. RIGHTS, CLAIMS AND DISPUTES

- 18.1 Any claim which Contractor may have against Company arising out of this Agreement shall be presented in writing to Company not later than fifteen (15) days after the first occurrence of the circumstance which gave rise to the claim. The claim shall contain a concise statement of the question or dispute and the relevant fact and data (including any applicable Purchase Order or Agreement provision) which support the claim. Contractor shall furnish any additional information, which Company may require to enable it to evaluate and decide the claim.
- 18.2 FAILURE TO SUBMIT ANY CLAIM IN THE SAID 15-DAY PERIOD SHALL CONSTITUTE A WAIVER ON THE CONTRACTOR'S PART FOR ENTITLEMENT TO EITHER ADDITIONAL REIMBURSEMENT OR AN EXTENSION OF TIME.
- 18.3 Any dispute between Company and the Contractor with respect to this Agreement, or the Services to be provided thereunder, or both, which cannot be resolved in the normal course by the respective representatives of Company, shall be referred to the responsible officers of Company and Contractor for resolution. Notwithstanding the existence of a dispute or dissatisfaction with the manner in which it was resolved or the lack of any such resolution, Company shall be obligated to maintain payments not in dispute to the Contractor and the Contractor shall be obligated to proceed with its performance of this Agreement (including any such disputed Project), unless otherwise directed by Company.

## 19. CONFIDENTIALITY

- 19.1 The provisions of the Non-Disclosure Agreement, dated \_\_\_\_\_ 2011, are incorporated herein and executed under separate cover.
- 19.2 Contractor has provided a written binding representation and warranty as stated above. If Contractor has any question about whether information is proprietary, it shall contact Company prior to disclosing such information for a determination as to its proprietary status. Contractor will require any permitted subcontractors it engages in order to carry out its Project under the Agreement to sign an identical Non-Disclosure Agreement to the one in Attachment B.
- 19.3 The obligations of Contractor regarding any of the above terms and conditions shall survive the completion or termination of this Agreement.

## 20. EQUAL EMPLOYMENT OPPORTUNITY



- 20.1 Contractor shall comply with all applicable federal, state and local anti-discrimination laws, the standards and regulations issued thereunder and the amendments thereto.
- 20.2 The Contractor agrees to fully comply with such provisions, and any amendments thereof. In addition, all subcontracts and agreements that the Contractor enters into to accomplish the Project under the terms of this Agreement shall obligate such subcontractors to comply with such provisions.

## 21.0 THIRD PARTY ITEMS

- 21.1 In the event that Contractor employs Subcontractor (s) (with Company's prior written approval) for any services associated with this Agreement or directly purchases equipment or materials to be used in the Project, the Contractor shall: 1) ensure that the appropriate provisions of this Agreement are applied in such subcontract(s) in the best interests and protection of Company and Forum Participants' and, 2) ensure that Company, via Contractor's billings, receives full benefit of commercial discounts, favorable rates and all guarantees made available by its vendors and/or Subcontractors of any tier.
- 21.2 It is understood that Company shall have full rights of ownership of all equipment and materials purchased by the Contractor for the prosecution of the Project. At the request of Company, Contractor shall provide, or cause to be provided, appropriate bills of sale, assignments or other documents to ensure the vesting of rights of title and ownership in Company.
- 21.3 Following completion of Project under this Agreement, Company may direct the Contractor to deliver all equipment, appliances and materials not previously incorporated in the Project or otherwise disposed of (with Company's approval) to the Company's facility

## 22.0 COMPLIANCE WITH LAWS

- 22.1 Contractor shall comply with all applicable federal, state and local laws, ordinances, rules, regulations, permits, licenses, or requirements thereunder in connection with the performance of the Project.
- 22.2 In connection with any performance under or in connection with this Agreement, Contractor, its Subcontractors, agents, and representatives shall, at all times: 1) strictly comply with Forum Participants safety and environmental standards, rules, regulations, directives, and procedures, including, without limitation, Forum Participants Contractor Safety Requirements and Contractor Environmental Requirements, (if incorporated as Purchase Order Documents by Company) and with any and all applicable federal, state, municipal, and local laws, rules, regulations, codes, and ordinances related to employee and public health, safety, and/or the environment (as in force upon the date of this Agreement and as in the future passed, enacted, directed, or amended), collectively, "Standards", and 2) conduct all operations in a manner to ensure the safety of all personnel, the general public, and the protection of the environment and so as to avoid the risk of injury, death, loss, theft, or damage by accident, vandalism, sabotage, or any other means. In cases where one or more conflicting Standards may be applicable, Contractor shall comply with the most stringent applicable Standard.



- 22.3 In the event of any emergency endangering life, health, property, or the environment, Contractor shall take such prompt action as may be reasonable and necessary to prevent, avoid, or mitigate injury, damage, or loss and shall, as soon as possible, report any such incidents, including Contractor's response thereto, to Company. In the event that Contractor becomes aware of any non-compliance with such Standards, Contractor shall, in each case, immediately notify Company and shall take prompt corrective action; provided, however, that such notice and action shall in no event relieve Contractor of any liability for, or in connection with, such non-compliance.
- 22.4 Contractor shall continually inspect, where applicable, all Project sites, facilities, materials, and equipment to discover and determine any conditions that might involve safety or environmental risks, and supervise its personnel to determine and enforce compliance with all Standards, and shall be solely responsible for discovery, determination, and correction of any non-compliance. Contractor shall be solely responsible and assume all liability for the safety and supervision of its personnel engaged in any performance in connection with this Agreement. Contractor shall designate a representative to insure compliance with all Standards and direct its personnel to take all precautions necessary to protect against and prevent injury or damage to persons, property, and/or the environment. Contractor shall instruct all such personnel on safety and environmental practices and the requirements of the Standards and shall inform such personnel of all modifications or additions thereto. Contractor shall furnish all appropriate safety equipment and enforce the use of such equipment.
- 22.5 In addition to any other warranties contained in this Agreement, Contractor warrants that its performance in connection with this Agreement shall comply with all applicable Standards.
- 22.6 Contractor shall save Company harmless from and against all liability resulting from violations by Contractor of said laws, ordinances, rules regulations, permits and licenses. Any and all costs related to Company's enforcement of this hold-harmless provision shall be borne by Contractor.
- 22.7 If Contractor observes that any requirement specified in the Contract is at variance with any governing laws, ordinances, rules, regulations, permits and licenses, Contractor shall promptly notify Company in writing before incurring any further liability, expense, or obligation for Contractor or Company

## 23. AMENDMENT

- 23.1 No amendment, modification, extension, or rescission of any term or provision of the Agreement shall be effective unless agreed upon in writing by the Company.

## 24. JURISDICTION AND GOVERNING LAWS

- 24.1 Unless other governing laws and/or other jurisdictions are specifically established in this Agreement shall be deemed to be executed in the Commonwealth of Massachusetts and this Agreement shall be interpreted and enforced according to the Laws of the Commonwealth of Massachusetts; provided, however, that in the event that the Project is to be performed



solely in other States then this Agreement shall be deemed to be executed in that States Laws and shall be interpreted and enforced according to the Laws of that State.

24.2 Only the courts in the State shall have jurisdiction over this Agreement and all related Purchase Orders issued hereunder and any controversies arising out of this Agreement. Any controversies arising out of this Agreement shall be submitted only to the courts of such State.

24.3 Contractor hereby submits to the jurisdiction of the courts in the State for the purposes of interpretation and enforcement of this Agreement. Contractor hereby waives personal service by manual delivery and agrees that service of process on Contractor in any action arising out of this Agreement may be made by registered or certified mail, return receipt requested, directed to Contractor at its address set forth in this Agreement.

25. NOTICES

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

To the Company: Bob McTighe  
Director of Financial and Administrative Services  
Northeast Energy Efficiency Partnerships, Inc  
91 Hartwell Avenue  
Lexington, MA 02421

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

26. SEVERABILITY

26.1 If any term of the Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then the 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.

27. WAIVER

27.1 The failure of either Party to enforce any provision of the 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 the Agreement.

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



27.3 No waiver, consent or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by Company and the Contractor.

27.4 Company rights and remedies hereunder shall be cumulative and not exclusive of each other and may be pursued separately or concurrently as Company determines.

## 28. ENTIRE AGREEMENT

28.1 This Agreement and all attachments hereto contain the entire agreement of Company with respect to the matters covered herein and cannot be modified, except in writing signed by Company.



**Attachment A  
Forum Participants\***

<p><b>Connecticut</b>  <i>Department of Public Utility Control  Connecticut Light &amp; Power  United Illuminating  Connecticut Municipal Electric Energy Coop</i></p> <p><b>Delaware</b>  <i>Energy Office</i></p> <p><b>District of Columbia</b>  <i>DC Sustainable Energy Utility  District Dept. of the Environment</i></p> <p><b>Maine</b>  <i>Public Utility Commission  Efficiency Maine Trust</i></p> <p><b>Maryland</b>  <i>Maryland Energy Administration  Public Service Commission  Baltimore Gas &amp; Electric  Allegheny Power  Pepco Holdings, Inc.  Southern MD Electric Co-op</i></p> <p><b>Massachusetts</b>  <i>Department of Public Utilities  Department of Energy Resources  Department of Environmental Protection  National Grid  NSTAR  Western Mass Electric Co.  Cape Light Compact  Unitil</i></p>	<p><b>New Hampshire</b>  <i>NH Public Utilities Commission  Public Service New Hampshire  Unitil  National Grid  NH Electric Co-op</i></p> <p><b>New York</b>  <i>Department of Public Service (Public Service  Commission)  Central Hudson Gas &amp; Electric  Consolidated Edison  National Grid  NY State Energy Research &amp; Development  Authority  New York Power Authority  Long Island Power Authority  Rochester Gas &amp; Electric</i></p> <p><b>Rhode Island</b>  <i>Public Utilities Commission  National Grid</i></p> <p><b>Vermont</b>  <i>Department of Public Service  Efficiency Vermont</i></p> <p><i>NESCAUM - Northeast States for Coordinated Air  Use Management  US Environmental Protection Agency  US Department of Energy</i></p>
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\* This list of Forum participants reflects those participants who are either Forum funders and/or participants from which data may need to be collected to support an EM&V Forum project.



**Attachment B  
NON-DISCLOSURE AGREEMENT**

AGREEMENT dated as of \_\_\_\_\_, 2011 ("Execution Date"), between \_\_\_\_\_ (the "Recipient") and Northeast Energy Efficiency Partnerships, with offices at 91 Hartwell Avenue, Lexington, MA 02421 ("NEEP" or the "Company"), each, individually, a "Party" and, collectively, the "Parties".

WHEREAS, the Company and its affiliates possess certain confidential and proprietary Information (as such term is defined below); and

[WHEREAS, subject to the prior written consent of Company and its affected affiliates and with the presence of an authorized Company or affiliate representative, the Recipient may be permitted access to certain facilities ("Facilities"); and]

WHEREAS, the Recipient desires the Company to disclose Information in connection with \_\_\_\_\_ ("Purpose"); and

WHEREAS, the Company is willing to disclose Information to the Recipient subject to the terms and conditions of this Agreement;

NOW, THEREFORE, the Parties mutually agree as follows:

1. The term "Information" means

(a) all business, financial, strategic, technical and other information which is (i) directly or indirectly furnished or disclosed by the Company or its affiliates (or its or its affiliates' agents, servants, representatives, or employees) to Recipient or its representatives, whether provided orally, in writing, by electronic means or otherwise, or (ii) discovered or derived from Recipient's or its representative's presence at, or access to, any of Company's or its affiliate's facilities; and

(b) strategies, techniques, ideas, memoranda, notes, reports, files, copies, extracts, inventions, discoveries, improvements, or anything else prepared or derived, in whole or in part, from the information described in 1(a), above; and

(c) the fact that the Information is being disclosed hereunder or that discussions or negotiations may take place or have taken place concerning the Purpose, or any of the terms, conditions or other facts with respect to any possible transaction relating to the Purpose, including the status thereof.

2. Recipient shall receive all Information in strict confidence, shall maintain the confidentiality and secrecy of the Information, and shall not divulge Information to any third party without the prior written consent of the Company. The Recipient may disclose Information to its employees ("Representatives") to the extent each such Representative has a need to know such Information for the purpose contemplated by this Agreement and provided that each such Representative agrees in writing to maintain the confidentiality of such Information and to be bound to observe all other obligations of the Recipient under this Agreement for the benefit of the Company and its affiliates. The Recipient's liability hereunder shall include, without limitation, liability for any breach of the terms of this Agreement to the extent caused by its Representative(s).



Recipient shall not acquire any rights in Information by virtue of its disclosure hereunder. No license to Recipient, under any trademark, patent, or other intellectual property right, is either granted or implied by the conveying of Information to the Recipient. None of the Information which may be disclosed to Recipient shall constitute any representation, warranty, assurance, guaranty or inducement by the Company to the Recipient of any kind. The Company (including its affiliates) shall not have any liability or responsibility for errors or omissions in, or any business decisions made by Recipient in reliance on, any Information disclosed under this Agreement.

3. Except as provided in Section 14, below, this Agreement shall not apply to Information which, at the time of disclosure to the Recipient, is in the public domain, or thereafter enters the public domain without any breach of this Agreement by the Recipient or any of its Representatives.

4. Recipient and its Representatives shall use Information solely in connection with the Purpose and shall not use, directly or indirectly, any Information for any other purpose without the Company's and any of its affected affiliate's prior written consent.

5. Recipient shall return and deliver, or cause to be returned and delivered, to the Company all tangible Information, including copies and abstracts thereof, within 30 days of a written request by the Company.

6. Nothing contained herein shall require or commit a Party to undertake or proceed with a transaction of or with the other Party, including, without limitation, the purchase of goods or services; any such transaction shall be the subject of a separate written agreement between the Parties.

7. Either Party may terminate this Agreement by written notice to the other Party; notwithstanding any such termination, all rights and obligations hereunder with respect to confidentiality and restrictions on use of Information shall survive with respect to Information disclosed prior to such termination.

8. The Parties acknowledge that a breach of this Agreement would cause irreparable harm to the Company and/or its affiliates for which money damages would be inadequate and would entitle the Company to injunctive relief and to such other remedies as may be provided by law.

9. This Agreement shall be governed and construed in accordance with the laws of The Commonwealth of Massachusetts, United States of America, without regard to the principles of the conflict of laws contained therein. Both Parties hereby submit to the personal and subject matter jurisdiction of the courts of the Commonwealth of Massachusetts for the purpose of interpretation and enforcement of this Agreement. All lawsuits filed to enforce any provisions of the Agreement, or to litigate any claims arising in connection with this Agreement, shall be filed in the Superior Court, Worcester, Massachusetts, which shall be the sole and exclusive venue for all litigation related to this Agreement.

10. This Agreement may be modified only by an instrument in writing signed by authorized representatives of both Parties to this Agreement.

11. This Agreement may not be assigned without the express written consent of both Parties hereto; provided, however, that the Company may assign this Agreement to an affiliate of the Company without the consent of the Recipient.



12. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited by, or determined to be invalid under, applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. All obligations and rights of the Parties expressed herein shall be in addition to, and not in limitation of, those provided by applicable law.

13. This Agreement constitutes the entire agreement between Company and Recipient with respect to the subject matter hereof, and any and all previous representations with respect to such subject matter, either oral or written, are hereby annulled and superseded.

14. The Recipient acknowledges that Information and/or data regarding the Facilities may be deemed "critical energy infrastructure information" ("CEII") under applicable Federal Energy Regulatory Commission ("FERC") rules and policies. Without limiting any other term of this Agreement, Recipient shall, and shall cause its representatives to, strictly comply with any and all laws and regulations (including, without limitation, FERC rules and policies) applicable to such CEII relating to any of Company's or its affiliates' facilities. The Recipient and its representatives shall not divulge any such information to any person or entity, directly or indirectly, unless permitted to do so by law and unless it has first obtained, in each case, the express specific written consent of the Company and any affected Company affiliate. In any event, to the extent that Recipient or any of its Representatives seeks or is ordered to submit Information to FERC, a state regulatory agency, court or other governmental body, whether in connection with the Purpose or otherwise, Recipient shall, in addition to obtaining Company's prior written consent, seek a protective order or other procedural protections to ensure that such Information is accorded CEII status or is otherwise treated as confidential or proprietary.]

15. Any consent or waiver of compliance with any provision of this Agreement shall be effective only if in writing and signed by an authorized representative of the Party purported to be bound thereby, and then such consent or waiver shall be effective only in the specific instance and for the specific purpose for which given. No failure or delay by the either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial waiver thereof preclude any other exercise of any other right, power or privilege hereunder.

16. This Agreement may be executed in multiple counterparts, each of which shall be considered an original.

IN WITNESS WHEREOF, this Agreement has been executed by authorized representatives of the Parties as of the date first above written.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name:  
Title:

**Northeast Energy Efficiency Partnerships, Inc**

By: \_\_\_\_\_  
Name:  
Title: