



**REGIONAL EVALUATION,  
MEASUREMENT & VERIFICATION FORUM**

**Request for Consultant  
Proposals  
(RFP)**

**Develop Savings Assumptions for Emerging  
Technologies and EM&V Methods for New  
Program Approaches**

Issued by:

Northeast Energy Efficiency Partnerships, Inc  
June 10, 2011

Questions and Notice of Intent to Bid Due:  
June 24, 2011, 4:00 PM (EST)

Proposals Due  
July 8, 2011, 4:00 PM (EST)

[RFP website](#)

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## 1. EXECUTIVE SUMMARY AND PROJECT OBJECTIVES

On behalf of the Regional Evaluation, Measurement and Verification Forum (Forum), Northeast Energy Efficiency Partnerships, Inc. (NEEP) is issuing this request for proposals. The Forum is a regional project facilitated and managed by NEEP representing states in New England, New York and the mid-Atlantic. The Forum is undertaking a number of projects in 2011, including this effort to develop common savings assumptions, savings algorithms and M&V methods for estimating savings for a list of priority emerging energy efficiency technologies and systems-oriented program approaches.

The project is being undertaken in the context of policy directives that are asking efficiency program administrators in several states to achieve increasingly larger levels of savings at a time when net per unit savings from some of their largest sources of savings in the recent years - e.g. CFLs and T8's - are declining due to federal efficiency standards and related market changes. That confluence of events has significantly increased the interest of efficiency program administrators in identifying and promoting new efficiency technologies and/or new approaches to the market for efficiency products and services. That, in turn, has generated great interest in understanding how much savings such new technologies and program approaches can actually provide. The objective of this project is to increase that understanding by:

- Developing savings assumptions or savings algorithms for those emerging technologies for which there is sufficient data to do so reasonably confidently today;
- Identifying weaknesses or gaps in existing data regarding savings from emerging technologies that should be addressed by future evaluation, measurement and verification (EM&V) efforts;<sup>1</sup>
- Recommending EM&V methods that should be undertaken to address such weaknesses or gaps, as well as to estimate savings for integrated, systems-oriented programs;
- Recommending EM&V methods that should be undertaken to estimate savings from selected systems-oriented programs; and
- Conducting recommended EM&V for one or two selected priority measures.

Key project tasks include:

1. Organizing and hosting a kick-off meeting
2. Conducting secondary research to identify and critically assess existing savings data and EM&V approaches that are potentially applicable and useful to the Northeast
3. Developing recommendations for savings assumptions, issues to address in future EM&V efforts and preferred methods for such efforts
4. Conducting primary data collection for selected priority measures
5. Producing a well written and documented report on the project and its results
6. Managing the project

NEEP intends to enter into a contract with a Consultant (or Consultant team), selected on behalf of the

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<sup>1</sup> This could be for both measures for which it was determined that initial deemed savings assumptions or formulae could be developed (i.e. for measures for which one could put forward something reasonably accurate even if it would warrant further primary data collection) and for measures for which existing data is simply too scarce or of too low quality to support even an initial deemed savings assumption or algorithm.

Forum, as a result of this RFP process. A NEEP project manager and a subcommittee of Forum members will provide oversight and guidance during the project. However, the consultant will only report to the NEEP project manager.

It is intended that this work be started in July 2011 and completed by March 2012, with preliminary/draft findings available in December 2011. However, we are open to considering suggestions for alternative timelines. The budget for the project is not to exceed \$225,000. This budget is expected to be more than enough to cover all secondary research and analysis; the balance of the budget should be devoted to conducting as much primary data collection (i.e., Task #4) as possible to address current data gaps or weaknesses. It is expected that the selected consultant team will include senior, experienced EM&V experts.

## 2. BACKGROUND

The Regional Evaluation, Measurement and Verification Forum (Forum) includes public and private sector representatives from the New England states, New York, New Jersey, Maryland, the District of Columbia and Delaware. The objective of the Forum is to support the successful expansion of demand-side resource policies and programs, by:

- Providing for consistent, credible and accessible savings data from demand resources to support state and regional energy, climate change and other environmental policy goals,
- Reducing the cost of evaluation, measurement and verification (EM&V) activities by leveraging resources across the region for studies of common interest, and
- Removing barriers to the participation of demand-side resources in regional markets by establishing regional protocols to be adopted by the states.

The Forum serves five core functions:

1. Provide a framework for multi-state agreement on consistent EM&V protocols;
2. Develop common/consistent protocols;
3. Coordinate multi-state research and evaluation;
4. Aggregate and provide access to state and regional level demand-side resource data, and
5. Provide access to, and visibility and technical support for Forum products and results.

NEEP staff and advisors serve as facilitators, conveners, project managers and administrators for the Forum and its activities. A regionally representative Forum Steering Committee of stakeholders directs the Forum's agenda. Specific Forum projects are undertaken with the input and guidance of topical Project Committees, which recommend products to the Steering Committee for Forum adoption.

The three Project Committees are:

- Protocol Development Committee. Focus is to consider and develop a) common/consistent protocols for EM&V characteristics (e.g. EM&V methods, precision/accuracy guidelines); b) common energy and demand savings assumptions, including stipulated values for common measures, input assumptions (e.g. measure life/persistence), and coincidence factors, and potential supporting on-line database; and c) common reporting formats for savings data and

associated cost and emission reductions.

- Research & Evaluation Committee. Focus is to undertake and support coordinated research and evaluation projects that serve as basis for protocol development (e.g. common assumptions). Examples of projects include savings load shape analyses (e.g. to inform coincidence factors); measure life and persistence studies; spillover and free-ridership approaches; and common measure cost input assumptions. Projects may include coordination of multi-state projects that involve a subset of the region.
- Education and Information Access Committee. Focus is to guide and help ensure Forum products and results (e.g. studies, reports, protocols, recommendations, references, etc.) are visible and readily accessible to stakeholders, while ensuring protection of any confidential information.

This Project falls within the purview of the Protocol Development Committee. The subcommittee of the Protocol Development Committee, comprised of representatives from the states and entities listed below, will provide input on this project.

Emerging Technologies Project Subcommittee	
MD	Allegheny Power Baltimore Gas & Electric Maryland Public Service Commission PEPCO Southern Maryland Electric Coop
CT	Connecticut Energy Efficiency Board Connecticut Light and Power United Illuminating
DC	District Department of the Environment, Energy Office Metro Washington Council of Governments
NY	Long Island Power Authority New York Power Authority NYSERDA Rochester Gas & Electric
MA	Massachusetts Department of Public Utilities Massachusetts EEAC Western Massachusetts Electric Company NSTAR
MA/NH/NY/RI	National Grid, PSNH
VT	VEIC / Efficiency Vermont
Other	NAESCO United States Environmental Protection Agency

Forum Protocol Development projects to date include the development of *Regional EM&V Methods and Savings Assumptions Guidelines*, issued in May 2010, which provide EM&V guidance for conducting comprehensive impact evaluation for a priority set of common efficiency measures. See <http://neep.org/emv-forum/forum-products-and-guidelines>. This project is considered, in part, a next phase to the 2010 Guidelines.

Other information on needs and issues associated with common practices in energy efficiency EM&V include:

- The Need for and Approaches to Developing Common Protocols to Measure, Verify and Report Energy Savings in the Northeast ([http://neep.org/uploads/EMV%20Forum/Protocols\\_report.pdf](http://neep.org/uploads/EMV%20Forum/Protocols_report.pdf))
- Survey of Energy Efficiency Evaluation Measurement And Verification (EM&V) Guidelines And Protocols - An Initial Review Of Practices And Gaps And Needs (<http://neep.org/uploads/EMV%20Forum/EMV%20Studies/Schiller%20EMV%20paper%202007.pdf>)

For more information on the Forum, please see: <http://neep.org/emv-forum>.

### 3. WORK SCOPE AND DELIVERABLES

While information in this Section is being provided to assist potential bidders, bidders are requested to propose their own approach to meeting the project objectives, including their recommendations with respect to appropriate report contents, the schedule and budget, and possibly modified or additional tasks, given the Project objectives.

#### A. Overview of Approach

This section of the RFP provides an overview of the required perspective that responses to the RFP should take to achieve the following outcomes:

1. **The development of deemed savings assumptions or algorithms** for those priority measures (see below for list of priority measures) for which there is sufficient data of sufficient quality to support at least initial assumptions or algorithms of reasonable (not perfect) accuracy.
2. **The identification of weaknesses or gaps in data needed to develop deemed savings assumptions or algorithms.** For measures for which initial assumptions or algorithms are developed per outcome #1 above, NEEP is interested in identification of any underlying assumptions that, though perhaps adequate for an initial savings estimate, should be researched to be confirmed or revised in the future. For measures for which it is determined that there is insufficient data to develop even an initial savings assumption or algorithm, NEEP would like an articulation of the data deficiencies that preclude development of an initial assumption or algorithm.
3. **Recommendations on EM&V methods that should be used to address weaknesses or gaps in data** identified in outcome #2 above. Such recommendations, if followed, would enable the future development of deemed savings or algorithms.
4. **Recommendations on EM&V methods that should be used to estimate savings from priority systems-oriented programs** (see below for list).
5. **The collection and analysis of primary data to for one or two priority measures**, consistent with recommendations from outcomes #2 and #3 above.

As noted above, the objective of this Project is to develop savings assumptions and/or EM&V methods to developing savings assumptions or estimates for a number of emerging efficiency measures and program approaches. There are a number of issues to consider in the development of a proposal and work plan for this project. A discussion of several important cross-cutting issues is presented in this Overview. Specific project tasks are discussed further below.

**Priority measures and program approaches:** NEEP and the Subcommittee have developed a list of priority emerging technologies on which to focus. In addition, NEEP is interested in several program design approaches to promoting *system* efficiency improvements in buildings (typically involving multiple measures with interactive effects). Deemed savings may not be ideal or appropriate for such approaches. NEEP is seeking input on that issue as well as recommendations on best practices for EM&V approaches to estimating savings for such programs. We have identified the following as priority measures and program approaches:

Priority Measures

1. Solid state lighting/LEDs
  - o Fixtures & screw-ins
  - o Commercial & residential
2. Heat pump water heaters
3. Ductless mini-split air conditioners
4. Ductless mini-split heat pumps
5. Set top boxes
6. Advanced/smart power strips<sup>3</sup>
7. Commercial/Industrial commissioning
8. Biomass pellet boilers

Priority Program Approaches

1. Whole house (single family) retrofits
2. Multi-family whole building retrofits
3. Commercial lighting design<sup>2</sup>

Some program administrators in the region are currently offering or planning to offer in 2012 programs promoting one or more of the emerging technologies and/or program approaches identified above. To the extent that it is valuable to the winning bidder, NEEP will work with the subcommittee to develop a list of such offerings at the outset of the project.

**Measure variations:** NEEP recognizes that a number of the emerging technology measures identified above come in multiple forms. For example, there are a variety of different kinds of LEDs for different types of lighting applications. Similarly, “consumer electronics” and “data center measures” are really categories of measures rather than individual technologies or measures. In such cases, bidders should indicate how many and which sub-categories of these measures they would suggest addressing and have assumed would be addressed in their proposal.

**A broad definition of “savings”:** Many measures and programs produce both electricity savings and natural gas or other fossil fuel savings. NEEP is interested in assumptions and/or methods for estimating both electric and non-electric savings. With respect to electricity savings, NEEP is interested in both energy (kWh) savings and coincident peak demand (kW) savings. For purposes of this study, the term “coincident” refers to regional system peak periods as defined by regional Independent System Operators in New England, New York and PJM.

**Program designs underlying measure savings assumptions:** NEEP is well aware that an efficiency technology will produce different levels of savings under different program designs. For example, savings are typically higher under a retrofit program promoting “early retirement” of old inefficient equipment than under programs promoting efficiency upgrades at the time of natural equipment replacement or purchase (where the baseline would be the efficiency of a new standard piece of equipment rather than an old piece of equipment). Similarly, advanced power strips might generate greater savings (or persistence of savings) if installed as part of a retrofit program in which consumers are educated about how they work rather than through a program that simply promotes their purchase

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<sup>2</sup> This is intended to address programs promoting holistic approaches to lighting efficiency (e.g. through lighting power density performance standards) which might include replacement of ballasts and lamps, de-lamping, occupancy sensors and/or other controls, etc. The impacts would include those associated with interactions with other building systems (e.g. HVAC).

<sup>3</sup> Note that NEEP is currently facilitating an Advanced Power Strip Working Group to collect manufacturer data that may be useful in developing a deemed savings value(s). The Contractor will be expected to review those manufacturer data as well as other data it may find. It should also be noted that the schedule for developing a deemed savings value for this measure may be faster than for others - i.e. no later than mid-September.

through retail outlets or on-line stores. Bidders are expected to explain in their bids the program approach or approaches they would assume - including why they chose the approaches they chose - in developing savings assumptions.

**Defining baselines:** For all measures it will be important to make clear what the baseline condition will be assumed to be. This will depend, in part, on the program design assumed (see discussion above). However, other factors will also come into play. For example, the baseline for a ductless air conditioner could be a window air conditioner or a ducted central system. The baseline for a ductless heat pump could be electric baseboard heating, a ducted air source heat pump system, and perhaps even a fossil fuel system. Thus, bidders should make clear in their proposals how they would determine what to assume about baseline conditions. Where appropriate, they should be prepared to assess savings for more than one baseline condition per measure.

**All sources of savings:** Savings can be produced in several different ways by some measures. For example, relative to a baseline of a ducted central system, ductless mini-split air conditioners can save energy due to higher efficiency ratings (where applicable), elimination of duct leakage, elimination of losses due to inadequate airflow over the coil, and by permitting zoning (i.e. multiple indoor units operating in different rooms based on thermostat settings for those rooms which may be based on occupancy characteristics during different times of day, rather than a central system operating based on a single thermostat setting for the entire house). Similarly, efficient lighting systems not only use less electricity to meet lighting needs, but also produce less waste heat and therefore reduce cooling loads (they can also increase heating loads in the winter). NEEP is interested in comprehensive assessments of energy savings that take all such variables into account.

**To Deem or Not to Deem:** NEEP is interested in expert opinions on which measures and program approaches (if any) lend themselves well to the development of prescriptive "deemed savings values", which (if any) to the development of quasi-prescriptive "deemed savings algorithms" (i.e. prescribed formulas which require some specific information about the measure, its use and/or the building into which it is being installed), which (if any) should be calculated on a custom basis for each application and which (if any) should be estimated based on ex post analysis of an appropriate sample of participants.

**Quality of Existing Data:** In determining whether there is sufficient data of high enough quality to support a prescriptive deemed assumption or algorithm today, the contractor is expected to assess the quality of primary data available. Put another way, NEEP is not interested in a review of recommended savings estimates or algorithms in existing Technical Reference Manuals (TRMs) in different states. We are interested in expert opinions as to whether the data underlying such TRM assumptions or algorithms, perhaps coupled with other data not current referenced by such documents, could support a deemed savings assumption or algorithm. To be sure, a case could almost always be made that available data are not as good or plentiful as one would like them to be. We are not expecting perfection. Rather we want to know whether existing data are adequate to support defensible initial assumptions or algorithms or not (i.e. are "good enough for now"). Even if they are adequate, we are interested in opinions as to which components of the assumptions and/or algorithms warrant updating through primary research in the future. We are also interested in recommendations regarding best practices for any primary research recommended.

## B. Project client

The selected consultant's client will be NEEP, which will have final say on scope issues and deliverables approvals in consultation with the Forum project subcommittee. The subcommittee will be responsible for providing broader Forum participant input and comment; its support, interaction, and input will be critical to the success of the Project. NEEP will be responsible for managing an efficient interaction process between the Forum subcommittee, the Forum participants, and the consultant - where such process involves:

- Subcommittee reviews and provides input to initial draft documents;
- Discussion and input provided by Forum Project Committees on final drafts; and
- Project Committees provide recommendation to Steering Committee to adopt Forum product.

Note that NEEP has engaged Chris Neme of Energy Futures Group to manage this project. His responsibilities include facilitating subcommittee meetings, providing technical support to the subcommittee as needed, monitoring the project progress to help ensure it stays on budget and on time, and reviewing and providing comments on draft work products. Chris will work under the direction of Julie Michals, NEEP's Regional EM&V Forum Director. Julie is expected to join Chris for all subcommittee meetings and also review and provide feedback on draft work products.

## C. Project Tasks

### Task 1: Kick Off Meeting.

The Contractor will participate in a kick-off meeting, via conference call, with the NEEP project manager and a subcommittee of Forum members. The purposes of the meeting will be to introduce the Contractor to the subcommittee, review the Contractor's proposed approach to the scope of work and the timeline for completing it, discuss any questions or feedback subcommittee members may have on the work plan or timeline, identify any data or information the Contractor may wish to obtain from subcommittee members and discuss communication protocols for the project. The Contractor will be responsible for scheduling of the meeting, developing the meeting agenda, hosting the meeting, running the meeting, drafting and distributing notes from the meeting, and drafting and distributing a revised scope of work for the project if discussions lead to changes. Each of these responsibilities will be coordinated with the NEEP project manager.

*Deliverables: Agenda, Minutes of meeting, Draft Revisions to Scope of Work (if any)*

### Task 2: Review Existing Studies and Data.

In this task the Contractor will research, collect and review existing studies that include data which may be useful in developing estimates of savings from priority measures. The Contractor will assess the applicability and usefulness of the data to NEEP and the Subcommittee members. Such assessments shall take into account how old the data are, any geographic issues (e.g. whether climatic differences or different building construction practices reduce the value of the data to the Northeast), the quality of the data and any other factors that may be appropriate.

The review of existing studies should also inform the Contractor's perspective on the advantages and disadvantages of different EM&V methods for developing savings estimates for the priority measures, as well as for priority program approaches.

*Deliverables: List of existing data or studies reviewed and Copies of reports documenting existing data or studies.*

### Task 3: Develop and Present Initial Recommendations

Following the review of existing studies, the Contractor will develop recommendations to NEEP and the Subcommittee on the following issues:

- (a) deemed savings values or algorithms - in the format typically used in Technical Reference Manuals - for those priority measures for which existing data could be used to support reasonably accurate estimates of savings;
- (b) assumptions, or components of assumptions, that warrant primary data collection in the future - both for measures for which initial deemed savings are developed in(a) (i.e. where existing data are adequate for initial savings estimates, but should be replaced in the future or complemented with additional data collection) and for measures for which initial deemed savings are not developed in (a) (i.e. because existing data were inadequate for even initial savings estimates);
- (c) EM&V methods that should be used to collect the data identified in (b);
- (d) The one or two priority measures for which the Contractor will conduct primary data collection to address the gaps identified in (b) using the methods identified in (c); and
- (e) EM&V methods that should be used to estimate savings for priority *systems-oriented* programs.

These recommendations, with supporting explanations, shall be provided in the form of a memo with appended documentation as necessary. The Contractor will also present the recommendations to NEEP and the Subcommittee in a Power Point presentation during a conference call. Following the conference call, the Contractor will work with NEEP to finalize decisions on the priority measures for which the Contractor will conduct primary data collection.

*Deliverables: Memo documenting recommendations, presentation summarizing recommendations.*

### Task 4: Primary Data Collection and Analysis.

In this task the Contractor will collect primary data for the one or two priority measures identified in Task 3. Prior to beginning the data collection, the Contractor will be expected to develop a plan outlining their proposed approach. The plan should describe the data that will be collected, from whom it will be collected (including a sampling plan if relevant), and how it will be collected. It should also include an explanation of how accuracy will be maximized, how bias will be minimized and why the proposed approach strikes the appropriate balance between accuracy and cost. A draft plan will be discussed with NEEP and the Subcommittee to reach agreement on the approach prior to commencement of actual data collection.

All data collected should be organized and stored in an Excel spreadsheet or Access database and provided to NEEP. The data should be in a sufficiently "clean" form and with a "key" if necessary to enable possible additional future analysis by NEEP or other members of the Subcommittee. The files should be "cleansed" of all confidential information (e.g. names of businesses that provided the information).

Following data collection, the Contractor will analyze the data, use the results of the analysis to develop the deemed savings assumption(s) or algorithms that the data collection was intended to inform, and present draft results to NEEP and the Subcommittee.

*Deliverable: Presentation on draft data collection plan, Excel spreadsheet or Access database containing raw data collected, presentation on the results of the data collection and subsequent analysis of the data*

### **Task 5: Reports**

The Contractor shall prepare a draft report for review and comment by NEEP and the Subcommittee. The report should include an Executive Summary, a description of the work undertaken, presentation of key results or findings, and appendices as appropriate. The draft report will be discussed with NEEP and the Subcommittee in one or (if necessary) more conference calls. Following feedback on the draft, the Contractor will produce a final report that will be published by NEEP.

*Deliverables: Draft and final reports (Microsoft Word and Adobe Acrobat formats)*

### **Task 6: Project Management**

The Contractor will be expected to manage the project to high standards of quality and timeliness. To ensure that the project progresses smoothly and well, the Contractor will be expected to provide to NEEP, every two weeks, written or oral updates on project progress, any issues or concerns encountered and recommendations for resolving such issues.

The Contractor will also be expected to present the final results of the project at an EM&V Forum meeting.

*Deliverables: Project updates every two weeks, presentation at EM&V Forum meeting*

### **D. Project Budget and Schedule**

It is intended that this work be started in July 2011. Tasks 2 and 3 are expected to be completed by November 2011. The completion date for Task 4 may depend on the data prioritized for collection. The final report should be completed within 2 months of the completion of Task 4. NEEP is open to suggestions for different timelines if bidders believe they would be necessary to produce quality work products.

## SUMMARY OF TASKS AND DELIVERABLES

PROJECT TASKS	DELIVERABLES
Task 1: Kick-off Meeting	<ul style="list-style-type: none"> <li>• <i>Agenda</i></li> <li>• <i>Meeting Minutes</i></li> <li>• <i>Revisions to Draft Scope of Work</i></li> </ul>
Task 2: Review Existing Studies and Data	<ul style="list-style-type: none"> <li>• <i>List of existing studies and data reviewed</i></li> <li>• <i>Copies of reports documenting existing data or studies</i></li> </ul>
Task 3: Develop/Present Initial Recommendations	<ul style="list-style-type: none"> <li>• <i>Memo documenting recommendations</i></li> <li>• <i>Presentation summarizing recommendations (likely 1 meeting)</i></li> </ul>
Task 4: Conduct Primary Data Collection	<ul style="list-style-type: none"> <li>• <i>Presentation on draft data collection plan (likely 1 meeting)</i></li> <li>• <i>Excel spreadsheet or Access database containing raw data collected</i></li> <li>• <i>Presentation on results of data collection and analysis (likely 1 meeting)</i></li> </ul>
Task 5: Reports	<ul style="list-style-type: none"> <li>• <i>Draft report</i></li> <li>• <i>Presentation to and discussion with NEEP and Subcommittee (likely two meetings)</i></li> <li>• <i>Final report (Microsoft Word and Adobe Acrobat formats)</i></li> </ul>
Task 6: Project Management/Meeting Participation	<ul style="list-style-type: none"> <li>• <i>Project updates every two weeks</i></li> <li>• <i>Presentation of final results at a Forum meeting.</i></li> </ul>

## 4. GENERAL SUBMITTAL INFORMATION

This Section of the RFP provides information for bidders concerning the submittal process, general requirements, schedule, and qualifications. Specific requirements for the content and preparation of bids are contained in Section 5.

### A. Contact and Communications

All communications between bidders and NEEP are to be directed to:

Chris Neme, [cneme@energyfuturesgroup.com](mailto:cneme@energyfuturesgroup.com) 802-482-5001 x1

Julie Michals, [jmichals@neep.org](mailto:jmichals@neep.org) 781-860-9177 x111

Cecily McChalicher, [cmcchalicher@neep.org](mailto:cmcchalicher@neep.org) 781-860-9177 x138

Any unauthorized contact may result in the disqualification of the contacting firm's proposal(s).

Potential bidders are encouraged but not required to submit a **notification of intent to submit a proposal in response to this RFP by 4pm on June 24, 2011 to NEEP contacts above.** This information helps NEEP plan and administer the RFP.

**B. Bidders' Q&A**

Bidders may submit questions via e-mail for this RFP. A website has been established for this Project RFP: [EM&V Forum RFP Website](#). **All questions submitted prior to 4pm on June 24, 2011 will be posted and answered on the website.** All questions and answers will be available to all respondents.

**C. RFP Submittal Format and Due Date**

Bidders are required to submit electronic versions of their proposal to:

Chris Neme, [cneme@energyfuturesgroup.com](mailto:cneme@energyfuturesgroup.com)

Julie Michals, [jmichals@neep.org](mailto:jmichals@neep.org)

Cecily McChalicher, [cmcchalicher@neep.org](mailto:cmcchalicher@neep.org)

**The proposals should be submitted in both Microsoft WORD (97-2003) and Adobe Acrobat format.** An electronic receipt will be sent to those who submit proposals on time. Late submittals will be rejected. Bidders are not required to submit print copies of their proposals.

The transmittal letter contained in the proposal package must have an electronic signature and must be signed by a person who is authorized to bind the proposing firm.

NEEP reserves the right to reject as non-responsive any proposals that do not contain the information requested in this RFP. NEEP is not liable for any costs incurred by any person or firm responding to this RFP or participating in best and final interviews.

**D. RFP Schedule**

RFP release	June 10, 2011
Intent to bid notice	June 24, 2011
Close of RFP question period	June 24, 2011
Electronic proposals due	July 8, 2011
Anticipated date of bidder selection	July 22, 2011
Anticipated contract start date	July 29, 2011

The above schedule is subject to change by NEEP.

#### **E. Minimum Qualifications**

A single firm or a team of firms under a single primary contractor may submit bids.

Key staff members must have demonstrated experience delivering high-quality EM&V services and/or studies for system benefit charge funded DSM programs. Preference will be given to bidders whose teams include individuals with direct experience with the priority measures and priority program approaches outlined in Section 3A. Changes in proposed key staff members may not be made during the execution of the work without written approval of NEEP.

#### **F. Modifications to the RFP**

NEEP may modify the RFP prior to the date fixed for submission of proposals by the issuance of an addendum to all parties who have submitted a notice of intent to bid by the required date.

#### **G. Post Proposal Negotiation and Awarding of Contracts**

NEEP reserves the right to negotiate both price and non-price factors during any post-proposal negotiations with a finalist. NEEP has no obligation to enter into an Agreement with any respondent to this RFP and may terminate or modify this RFP at any time without liability or obligation to any respondent.

#### **H. Acceptance of Terms and Conditions**

The submission of a proposal to NEEP shall constitute a Bidder's acknowledgement and acceptance of all the terms, conditions and requirements of this RFP.

NEEP will utilize its standard Services Agreement to contract for the services outlined in this RFP. **A list of exceptions to this document should be returned with bidder's response, see Section 5 of this RFP.** The Services Agreement is included as an attachment to this RFP, Appendix B.

#### **I. All Submitted Proposals Become Exclusive Property of NEEP**

All proposals submitted to NEEP pursuant to this RFP shall become the exclusive property of NEEP and may be used for any reasonable purpose by NEEP.

## 5. PROPOSAL SUBMITTAL REQUIREMENTS

### A. Submission of Proposals

Proposals should provide straightforward and concise descriptions of the proposer's ability to satisfy the requirements of this RFP. Omissions, inaccuracies or misstatements will be sufficient cause for rejection of a proposal. Proposals not submitted as indicated may be rejected.

NEEP and the Forum are looking for proposals demonstrating creativity, expertise and experience in how bidders approach the work scope - not necessarily a detailed final approach. Once the consultant is selected, an initial task will be to review the scope and deliverables with the NEEP project manager, technical and policy advisor, and a Forum subcommittee.

Bidders are also invited to submit optional tasks and budgets if they believe there are additional or tangential tasks that they believe would benefit the objectives of the Project.

All proposals must include the documents identified in Appendix A "Required Proposal Checklist". **Proposals not including the Checklist may be deemed non-responsive.**

### B. Proposal Format

Bidders are requested to provide concise yet complete description of the bidder's approach and capabilities for satisfying the required services outlined in this RFP. **Excessive length is discouraged.** In addition, bidders are encouraged to proactively present additional information and responses, not specifically requested, that help demonstrate understanding of this project's objectives and needs as well as bidder's creativity, experience, and/or expertise.

Proposals must adhere to the following set format (the numbers indicated are suggested maximum page limits):

- Proposal cover;
- Signed cover/transmittal letter;
- Table of Contents (include proposal date and page numbers on each page of proposal);
- Completed proposal checklist;
- Executive summary (2 pages);
- Work scope and schedule (10 pages);
- Staffing and subcontracting plan (2 pages);
- Qualifications and Experience (10 pages);
- Budget and Billing Rates (2 pages including tables);
- Exceptions to contract terms (if needed);
- Conflicts of Interest (if needed); and
- Appendix - Resumes (2 pages per resume).

The proposal cover must indicate the RFP name, the proposal date, bidder's name and list of subcontractors. The transmittal letter must also state that the person signing the letter is authorized to commit the bidding organization to the proposed work scope, budget and rates; that the information in the proposal is accurate; and that the proposal is valid for 90 days from the date of submittal.

For the checklist please use the form in Appendix A.

### **I. Section 1: Executive Summary**

Section 1 of the proposal should contain a high level summary of the proposal including the approach to the tasks, key staff assigned to the effort, and the consultant's or bidding team's qualifications to perform the services sought through this RFP.

### **II. Section 2: Work Scope and Schedule**

Section 2 of the proposal should discuss bidder's approach to Tasks defined in Section 3 of the RFP with consideration of the objectives defined in Section 1. Describe bidder's approaches to each of the work scope tasks with sufficient detail to distinguish the strengths and unique features of the bidder's team and approach.

Section 2 must include a schedule for performing the work. The schedule should be presented graphically and supplemented with text explanations needed to provide a complete understanding of the proposed timeline.

### **III. Section 3: Staffing Plan**

In Section 3 bidders are requested to provide a staffing plan. Note that assigned staff qualifications are more critical than firm qualifications and that staffing changes for key personnel are subject to approval by NEEP. In particular, a successful proposal will indicate one or more experienced principals that will direct and commit to the Project.

- Describe the roles of each of the positions listed in bidder's staffing plan.
- Identify the lead staff member assigned to manage the work, provide a short biography, and explain why he or she is qualified for this position. Describe this person's availability for the project, and the office where he or she will be based.
- Identify the key personnel to be assigned to this project, describe their responsibilities, and provide a paragraph biography for each person. Indicate availability and length of time commitment to project.
- Specify any anticipated subcontractors who will be used, roles, responsibilities, and proposed subcontractor mark-up percentage.

Include resumes for all individuals named in the staffing plan. Resumes and bios should describe relevant responsibilities from other projects that will help NEEP evaluate the qualifications and experience of key personnel. Please limit length of resumes to two pages and place in an appendix.

**IV. Section 4: Firm Qualifications and Experience**

Use this section to address bidding team’s qualifications and experience, drawing on lessons learned and best practices experience. Bidders should also provide two to four references from current (preferred) or recent clients for whom they have performed projects that are relevant to the work scope. References should include a brief synopsis of specific services provided, company name and location, contact name, contact title, telephone number and, email address of the reference. In the event the bidder is forming a new organization to bid on this proposal, the bidder should provide the related references for the key staff members proposed for the project.

References should be included (two to four each) for any major subcontractors.

**V. Section 5: Budget and Billing Rates**

Using the two tables shown below, bidders must provide labor and other direct costs proposed for this project.

Budget Table One - Billing Rates

Person	Title	2011 Hourly Billing Rate (all inclusive)



Budget Table Two - Task by Task and Total Budget

Task	Personnel Assigned	Hours per Personnel Assigned	Labor Costs	Directs Cost (to be billed at cost to Consultant)	Per Task or Total Cost
1					
2					
3					
4					
5					
6					
7					
Total					

**VI. Section 6: Exceptions to contract terms**

Bidders must provide any requested exceptions to the Services Agreement included as Appendix B.

**VII. Section 7: Conflicts of Interest**

Bidders should identify, and address as they feel appropriate, potential situations that may be perceived as a conflict of interest in completing this work. Examples would be work performed implementing or evaluating programs in the Region. Such situations are not necessarily a conflict, and may speak to the bidder’s qualifications, but should be disclosed.

**VIII. Section 8 (Appendix): Resumes**

Include resumes for key staff noting relevant experience and expertise



## 6. SELECTION PROCESS AND EVALUATION CRITERIA

NEEP and the project subcommittee will base their evaluation of proposals on a scoring matrix below. As noted above, the qualifications of key staff (principals) assigned to lead this Project and the amount of time (commitment) they commit to the Project will be weighed heavily.

**RFP Evaluation Criteria/Scoring Matrix**

<b>Part A: Technical Approach</b>
1. Proposal quality - comprehension and clarity regarding meeting project objectives and quality of proposed approach for meeting those objectives
2. Thoroughness and practicality of approach
3. Creativity of approach
<b>Part B: Management Approach</b>
1. Dedicated resources
2. Demonstrated management competence of key staff
3. Approach to use and management of subcontractors
<b>Part C: Qualifications and Experience</b>
1. Demonstrated competence and experience of key staff and firm(s)
2. References
<b>Part D: Cost</b>
1. The extent of primary data collection that is proposed (i.e. the level of resources available for primary data collection after all secondary data collection, analysis and other related tasks are covered).
2. Billing rates and direct costs/subcontractor mark-up rates (if any)



## APPENDIX A: REQUIRED PROPOSAL CHECKLIST

### REQUIRED PROPOSAL CHECKLIST

<b>Bidder Information</b>		
Name of Bidder:		
Contact Name:		
Contact Phone:		
Contact Email:		
Subcontractors:		
<b>Evaluation Scope</b>		
Proposal Checklist & Locator	Included	Section/Page
Proposal Cover		
Transmittal Letter - signed original		
1. Executive summary		
2. Work scope and schedule		
Schedule figure		
3. Staffing and subcontracting plan		
4. Qualifications and Experience		
References		
5. Budget		
Budget Tables		
6. Exceptions to contract terms		
7. Conflicts of Interest		
8. Resumes (Appendix)		

## APPENDIX B: NEEP PROFESSIONAL SERVICES AGREEMENT

### 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 Agreement's 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 Electrical Energy          Cooperative</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          Until</i></p>	<p><b>New Hampshire</b>  <i>NH Public Utilities Commission          Public Service New Hampshire          Until          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><b>NESCAUM - Northeast States for Coordinated Air          Use Management</b>  <i>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.

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

**Northeast Energy Efficiency Partnerships, Inc**

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