

**THIS IS A SAMPLE CONTRACT. NEEA RESERVES THE RIGHT TO ALTER OR REPLACE THESE TERMS AND CONDITIONS**

**ALL NEGOTIATIONS SHALL BE CONDUCTED THROUGH NEEA'S LEGAL DEPARTMENT**

**CONTRACT TITLE: [INSERT]  
CONTRACT NUMBER: [INSERT]  
Effective Date: [INSERT]**

**PARTIES:**

**Northwest Energy Efficiency Alliance, Inc.**  
421 SW 6th Ave., Suite 600  
Portland, OR 97204  
PH: 503-688-5400 FAX: 503-688-5447

**AND**

**[Insert Contractor]**

In consideration of the mutual promises and other items of value exchanged between them, the Northwest Energy Efficiency Alliance, Inc., an Oregon nonprofit corporation ("NEEA") and [Insert Contractor] ("Contractor") enter into this independent contractor agreement (the "Contract") as of the date set forth above (the "Effective Date"). NEEA and Contractor may also be referred to as "Party" or collectively as "Parties." The Parties agree as follows:

**Article 1. Statement of Work and Term of Contract**

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**1.01 Statement of Work.** The Contractor shall perform and deliver all work and work products (the "Tasks") listed in the attached Statement of Work, which is incorporated as Exhibit A. The Contractor shall perform all Tasks pursuant to the schedule set forth in Exhibit A.

**1.02 Term of Contract.** This Contract begins on the Effective Date and ends on [INSERT DATE] unless otherwise terminated under Article 14(Termination) of this Contract. Time is of the essence in the performance of this Contract.

**Article 2. Contract Price**

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**2.01 Contract Price.** NEEA shall pay Contractor a fixed fee of [INSERT SUM] as allocated in Exhibit A.

**2.02 Budget.** The Contract budget as allocated per Exhibit A task is set forth in Exhibit B, which is incorporated into this Contract by this reference.

**2.03** Contractor is authorized to make subtotal budget line item transfers not exceeding ten percent (10%) of the budget allocated to each Exhibit A task. Reallocation of funds exceeding this amount must have the prior written approval of NEEA. Contractor shall send a written request for such budget changes to NEEA. NEEA will approve or deny the request as soon as possible.

### **Article 3. Payment and Reporting**

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**3.01 Invoices, Financial Documentation, and Progress Report.** Unless otherwise agreed, no later than five calendar (5) days after the end of each calendar month, the Contractor shall submit to NEEA the following items:

- (a) Invoice and Financial Documentation complying with the format and requirements set forth in the NEEA “Invoicing Guidelines for Contractors,” which can be found at <http://www.neea.org/contracts>;
- (b) A Progress Report complying with the format and requirements set forth in Exhibit C.

**3.02 Payment.** NEEA shall make payments to Contractor within thirty (30) calendar days after NEEA’s receipt and approval of the Invoice, Financial Documentation and Progress Report. To the greatest extent possible, all payments will be made by electronic fund transfer.

**3.03 New Taxes, Fees, Costs, or Penalties.** The Parties shall promptly meet to negotiate a fair allocation of any taxes, fees, costs or penalties imposed on NEEA arising out of Contractor’s performance under this Contract as a result of legislation or regulations not in effect as of the effective date of the contract.

**3.04 Withholding of Payment.** NEEA may withhold from payment to Contractor the reasonable value of any expense incurred to NEEA under Article 9 (Indemnification and Limitation of Liability) and Article 14 (Termination) under this Contract.

### **Article 4. Performance by Contractor**

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**4.01 Ethical Standards.** Contractor and its employees, agents and subcontractors shall adhere to NEEA’s Standards of Business Conduct set forth at <http://www.neea.org/contracts>.

**4.02 Notice of Subcontractors.** Subject to Article 16.04 (No Assignment), Contractor shall provide reasonable notice to NEEA prior to hiring any subcontractor in performance of the Tasks.

**4.03 Performance Assessment.** NEEA may perform an annual Vendor Performance Assessment using the format set forth in Exhibit D.

**4.04 Key Personnel.** The following individuals are designated “Key Personnel” for purposes of this Contract: **[INSERT KEY PERSONNEL]**. Contractor shall notify NEEA within twenty-four (24) hours if any of the Key Personnel is (are) no longer available to perform work under this Contract, whether voluntary or involuntary. NEEA reserves the right to terminate or modify the Contract if the Key Personnel is (are) no longer available to perform work under this Contract.

**4.05 Properly Licensed, Equipped, and Organized.** During the term of this Contract, Contractor shall be properly licensed, equipped, organized and financed to perform the Tasks and shall at all times employ or contract persons that are reasonably experienced and qualified to perform the Tasks.

**4.06 Duty to Cooperate.** Contractor shall cooperate fully with NEEA and others to coordinate performance of the Tasks by Contractor and any of Contractor’s subcontractors, and shall immediately provide notice to NEEA of any events or work related to the Contract that may have a negative impact on the Tasks.

**4.07 Conflict of Interest.** Contractor represents that there are no Conflicts of Interest (as defined below) that might interfere with Contractor’s obligations under this Contract and shall immediately notify NEEA of any actual or potential Conflicts of Interest that arise during the term of this Contract. The term Conflicts of Interest includes, but is not limited to, situations in which this Contract conflicts with (i) Contractor’s obligations under another contract, or (ii) Contractor’s other business interests.

**4.08 Systems Use Agreement.** Contractor, its employees and/or subcontractors shall sign a NEEA Systems Use Agreement before accessing NEEA’s non-public electronic or computer systems, databases or equipment.

**4.09 Liens and Claims.** Contractor shall (1) immediately notify NEEA of and (2) promptly secure the reasonable discharge of or settlement of any liens, claims, or potential claims asserted or filed against Contractor or its subcontractors in connection with Tasks. Contractor shall furnish to NEEA such releases of liens and claims and documents related to such liens and claims that NEEA may reasonably request.

## **Article 5. Status as Independent Contractor**

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**5.01 Status.** Contractor is an independent contractor of NEEA and shall not hold itself out as an employee, agent, or representative of NEEA or enter into any contract or undertaking on behalf of NEEA. Contractor is free from direction and control over the means and manner of providing the Tasks, subject only to the right of NEEA to specify the desired results. Contractor is responsible for licenses or certificates necessary to provide the Tasks and has the authority to hire other persons to provide or to assist in providing the Tasks. NEEA will not withhold any taxes from any payments made to Contractor, and Contractor will be solely responsible for paying all taxes arising out of or resulting from the performance of the Tasks, including but not limited to income, social security, worker’s compensation and employment insurance taxes.

**Independently Established Business.** Contractor represents, warrants and covenants to NEEA that, during the term of this Contract, Contractor is customarily engaged in, and will continue to be customarily engaged in, an independently established business as defined in ORS 670.600(3).

## Article 6. Property

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**6.01 Ownership of Intellectual Property.** NEEA owns all right, title and interest in and to all works or inventions protectable by trade secret, patent, trademark, or copyright law created or acquired in performance of this Contract including, but not limited to: ideas, concepts, know-how, techniques, processes, data, documents, maps, reports, samples, information, drawings, computer software, inventions, and discoveries (collectively the "Work Product"). To the greatest extent possible under copyright laws, all Work Product shall be "work made for hire" and owned by NEEA. Contractor agrees that compensation received under this Contract is consideration for any works made for hire.

- (a) If the assignment of ownership rights of Work Product to NEEA is prohibited by law or otherwise not possible, then Contractor grants to NEEA and NEEA's funders a non-exclusive, irrevocable, sublicensable, royalty-free license to any Work Product.
- (b) Contractor shall cooperate fully with NEEA in connection with any patent application, copyright registration, trademark registration, or any other legal process regarding NEEA's intellectual property rights connected with this Contract.

**6.02 Ownership of Equipment, Real Property and Materials.** Unless agreed to otherwise in **Exhibit A**, all equipment and materials not defined in Article 6.01 (Ownership of Intellectual Property) acquired in the performance of this Contract shall belong exclusively to NEEA. Upon request from NEEA, Contractor shall promptly deliver all such equipment and materials to NEEA.

**6.03 Notice of Government Rights in Data.** Contractor acknowledges that Clause 17-2 "Patent Rights" and Clause 17-3 "Rights In Data" of BPA Grant #44790 provides certain rights to the Federal Government and agrees to comply with the terms of these clauses, which are located at <http://www.neea.org/contracts>.

**6.04 Retention of Property.** Unless otherwise directed by NEEA, Contractor shall deliver all Work Product to NEEA before the termination of the Contract. In the event that Contractor is directed by NEEA not to deliver Work Product to NEEA, Contractor shall store such undelivered Work Product for three (3) years after termination of the Contract and deliver Work Product to NEEA upon request.

## Article 7. Confidentiality

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### 7.01 Confidentiality.

- (a) Contractor shall not disclose to any third party Confidential Information received or created in connection with this Contract unless expressly authorized in writing by NEEA. As used in this Contract, the term "Confidential Information" means: (a) strategic business documents related to NEEA's operations; (b) NEEA's proprietary information; (c) personal information of NEEA's clients, customers, or participants; (d) information marked or designated by NEEA as confidential; or (e) information reasonably known to Contractor as being treated by the NEEA as confidential, whether or not in written form and whether or not designated as confidential.
- (b) Contractor shall employ the same standards and procedures it uses to protect its own confidential information to protect NEEA's Confidential Information, but no less than a reasonable degree of care under the circumstances.

- (c) Contractor will not be liable for the disclosure of any Confidential Information that is: (i) easily accessible, or becomes easily accessible, in the public domain through no fault of Contractor; (ii) lawfully received from a third party and without any obligation of confidentiality; or (iii) already known to Contractor without any limitation on disclosure by NEEA before its receipt.

## **Article 8. Examination of Records and Audit Requirements**

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**8.01 Inspection and Verification.** NEEA may, upon twenty-four (24) hours' written notice to Contractor, inspect or verify Contractor's performance. Contractor shall provide NEEA sufficient, safe and proper facilities and equipment for such inspection and free access to such facilities. Such inspection or verification does not relieve Contractor of responsibility for performance of the Tasks.

### **8.02 Examination of Records.**

- (a) The Contractor shall maintain books, records, and documents related to all direct and indirect costs incurred and anticipated to be incurred by the Contractor and its subcontractors during the performance of this Contract and for three years after the termination of this Contract (the "Contractor Records").
- (b) NEEA and its representatives shall have the right to reasonably access any Contractor Records at the office of the Contractor for inspection, audit, or reproduction until three years after the termination of this Contract or for such longer period as needed to settle known or anticipated litigation, claims, audits or other action involving the Contractor Records.

## **Article 9. Indemnification and Limitation of Liability**

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**9.01 General Indemnification.** The Contractor shall indemnify, defend and hold harmless NEEA, its directors, officers, employees, affiliates, and agents (the "NEEA Indemnitees") from any and all claims, demands, suits, losses, costs, and damages of every kind and description, including court costs and attorney fees, resulting from or arising out of the performance or nonperformance of the Contractor's obligations under this Contract. The Indemnity obligations under this Article includes without limitation:

- (a) Loss of or damage to any property of a party or any third party;
- (b) Bodily or personal injury to, or death of any person(s);
- (c) Claims arising out of workers' compensation, unemployment compensation, or similar laws or obligations applicable to the Indemnifying Party; and
- (d) Claims arising out of Contractor's actual or alleged infringement or wrongful use of any patent, copyright, trade name, trademark, confidential or proprietary concept, method, process, product, writing, information or other item arising out of Contractor's obligations under this Contract.

**9.02** If any of the Tasks or use of the Work Product constitutes an infringement of any patent, copyright, trade name or trademark, or wrongful use of any confidential or proprietary concept, method, process, product, writing, information or other item, Contractor shall at its expense either (1) procure for NEEA and the rest of the NEEA Indemnitees the right to use the infringing item; (2) replace the infringing item with a substantially equal but non-infringing item; or (3) modify the infringing item so that it becomes non-infringing.

**9.03 Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS CONTRACT.

## **Article 10. Workers' Compensation and Insurance**

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**10.01 Insurance Policies.** Contractor shall maintain the following levels of insurance for the duration of this Contract:

- (a) Commercial General Liability Insurance - \$1,000,000 / occurrence; \$2,000,000 aggregate.
- (b) Automobile Liability Insurance - \$1,000,000 combined single limit.
- (c) Professional Liability Insurance - \$1,000,000 combined single limit.

**10.02 Policy Terms.** The insurance coverages listed above will be written on an occurrence basis, not on a claims-made basis and will be primary and non-contributing over any other insurance available to Contractor. All policies shall include a waiver of subrogation rights in favor of NEEA.

**10.03 Workers' Compensation and Employers' Liability Insurance.** Contractor shall maintain statutory workers' compensation and employers' liability insurance as required by applicable state law.

**10.04 Additional Insureds.** NEEA will be named as an additional insured on all insurance policies required by Article 10(Workers' Compensation and Insurance) with the exception of workers' compensation and professional liability insurance. Additional insured status under general liability shall apply to both ongoing and completed operations.

**10.05 Insurance Certificates.** Contractor shall provide NEEA with certificates of insurance, prior to commencement of the Tasks under this Contract, evidencing all policies required under Article 10 (Workers' Compensation and Insurance) of this Contract prior to the Effective Date, and any policies held by subcontractors who are engaged by Contractor to perform under this Contract. All Contractor certificates of insurance will contain the promise of the insurer to give NEEA written notice of any lapse, cancellation or material reduction of any of the required policies in accordance with policy terms.

**10.06 Right of Rejection.** NEEA retains the right to reject any insurance policy, provider, underwriter and certificate of insurance held or provided by Contractor that fails to meet NEEA's qualifications. Acceptance of the policies and certifications required of and provided by Contractor under this Contract will not be unreasonably withheld by NEEA.

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**Article 11. Compliance with Laws, Regulations, and OMB Circulars**

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**11.01 General Compliance.** Contractor shall comply with all applicable laws, rules, and regulations of any governmental authority applicable to the Contractor during the term of this Contract. In addition to the general requirements listed above, Contractor shall comply with any applicable requirements contained in 2 CFR part 215 (OMB Circular A-110), including Appendix A to OMB Circular A-110, and 2 CFR part 230 (OMB Circular A-122), and shall “flow down” all such rules, regulations, and requirements to its subcontractors.

**11.02 Acknowledgement of Specific BPA Funding.** This Contract is partially funded by Grant No. 44790 from the Bonneville Power Administration (“BPA”), which is incorporated into this Contract by this reference and can be found at <http://www.neea.org/contracts>. Contractor shall be responsible for any applicable obligations and reporting requirements provided in Grant No. 44790 and shall copy NEEA on all Contractor correspondence with BPA. Grant No. 44790 was executed in accordance with BPA’s Financial Assistance Instructions, which can be found at <http://www.bpa.gov/corporate/business/bfai/>.

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**Article 12. NEEA Communications Guidelines**

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**12.01 Standards and Guidelines.** Contractor shall adhere to NEEA’s Brand Standards and Communication Guidelines and NEEA’s Third-Party Brand Guidelines set forth at <http://www.neea.org/contracts>. Failure to comply with the Guidelines listed in this Article may result in termination of this Contract. NEEA reserves the right to inspect and review Contractor’s compliance with these Guidelines.

**12.02 Publication Requirements.** Contractor shall give NEEA a two-week notice to review and approve any public dissemination of materials, information, data or results related to this Contract (“Publication Item”). Contractor shall include an acknowledgment in any Publication Item that it was supported, in whole or in part, by NEEA, but that such support does not constitute an endorsement by NEEA of the views expressed therein.

**12.03 Media.** Contractor shall not speak to the media on behalf of NEEA, or regarding any NEEA-funded project, without prior approval from NEEA’s Corporate Communications Department.

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**Article 13. Correction of Noncompliance**

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**Contractor’s Obligation to Correct.** Contractor shall, at its expense, promptly and satisfactorily correct any Tasks that NEEA reasonably finds to be defective or not in compliance with Contractor’s requirements of this Contract. If Contractor fails to satisfactorily correct the defective or non-complying Tasks, then NEEA may correct such Tasks by the most commercially reasonable means available to it at Contractor’s expense.

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**Article 14. Termination**

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**14.01 No Cause Termination.** NEEA may at any time, upon ten (10) days’ written notice to Contractor, terminate this Contract for all Tasks not then performed, whether or not Contractor is then in breach or default. Upon receipt of any such notice of termination, Contractor shall, except as otherwise directed by NEEA, cease performance of the Tasks as specified in such notice.

**14.02 For Cause Termination.** Either Party may at any time terminate this Contract for cause if the other Party: (1) fails to make sufficient progress in its work as to endanger complete and timely performance of the Tasks; (2) breaches or defaults any of its representations, warranties, or covenants under this Contract; or (3) fails to comply with any material provision of this Contract. Such termination is effective immediately upon notice to the other Party.

**14.03 Equitable Adjustment.** If termination is not the result of Contractor's breach or default, NEEA shall compensate Contractor for the percentage of the Tasks satisfactorily completed at the time of termination. Contractor shall use its best effort to minimize the compensation payable under this Contract in the event of such termination.

## **Article 15. Non-Solicitation**

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**15.01** During the term of this Contract and for one year after the termination of this Contract, Contractor will not, without the prior written consent of NEEA, directly or indirectly recruit or solicit to employ (as an employee or contractor) or encourage the departure of any NEEA employee.

## **Article 16. Miscellaneous**

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**16.01 Notice.** Any notice under this Contract shall be in writing and will be effective: (a) when delivered to the address, email, or fax number listed at the end of this Contract or such other address, email or fax number as either Party may designate by like notice from time to time; (b) when personally delivered, when delivered by facsimile upon confirmation of receipt, when delivered by email upon confirmation of receipt by recipient or automatic email tracking (such as "read receipt"), when delivered by reputable overnight courier, or when delivered on the day following delivery by certified or registered U.S. mail, postage prepaid, return receipt requested.

**16.02 Counterparts; Electronic Signatures.** This Contract may be executed in counterparts and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party. Contracts or counterparts executed and delivered by the Parties through facsimile transmission or by email delivery of a ".pdf," ".xps," or equivalent read-only format data file shall be considered valid and create the binding obligations of a signed original Contract.

**16.03 Authority.** Each of the individuals signing this Contract represents and warrants that he or she has been properly authorized by the Party for whom the individual is signing this Contract to enter into this Contract.

**16.04 No Assignment.** Contractor shall not assign, subcontract or delegate any right or interest in this Contract without the prior written consent of NEEA. Any assignment without NEEA's prior written consent is voidable at NEEA's option. Assignment, subcontracting or delegation of this Contract shall not relieve Contractor from its responsibility to perform the Tasks in accordance with this Contract. Notwithstanding the above, this Contract is fully binding upon, inures to the benefit of, and is enforceable by the successors, permitted assigns and legal representatives of the respective parties to this Contract.

**16.05 Waiver.** The failure of either Party to enforce strict performance of any provision of this Contract or exercise any right under this Contract shall not be construed as a waiver of the Party's right to subsequently require performance of any or all provisions or rights under this Contract.



**16.06 Future Compliance.** In the event that additional requirements are at any time imposed on NEEA by a funding agreement, including changes to NEEA funding, the Parties shall in good faith promptly renegotiate this Contract so that the Contract is in compliance with the funding agreement.

**16.07 Survival of Obligations.** All obligations of Contractor and of NEEA that may reasonably be interpreted or construed as surviving the completion, termination or cancellation of this Contract will survive the completion, termination or cancellation of this Contract, including but not limited to Article 3, Article 6, Article 7, Article 8, Article 9, Article 11, Article 12, Article 13, Article 15, and Article 16.

**16.08 Rights and Remedies.** The rights and remedies of the parties set forth in this Contract are in addition to and do not in any way limit any other rights or remedies afforded by any other provision of this Contract or by law.

**16.09 Entire Agreement.** This Contract sets forth the entire agreement of the Parties and supersedes any and all prior negotiations, agreements, discussions and understandings between the Parties, whether oral or written, relating to the subject matter hereof, including but not limited to the Tasks. Any amendment or modification of this Contract shall be made only in writing and signed by the Parties.

**16.10 Headings.** The headings in this Contract are for reference only and shall not affect the meaning, construction or interpretation of this Contract.

**16.11 Exhibits.** The exhibits referenced in this Contract are part of this Contract as if fully set forth in this Contract. In the event of any inconsistency between this Contract and the Exhibits, the terms of this Contract shall control.

**16.12 Severability.** If any provision of this Contract is determined to be invalid or unenforceable, the remainder of the Contract shall remain in full force and effect and shall be binding upon the Parties. If possible, any unenforceable provision within this Contract will be modified to reflect the parties' original intent.

**16.13 Governing Law.** This Contract will be interpreted, construed and enforced in all respects in accordance with the substantive and procedural laws of the State of Oregon, without regard to conflict-of-laws principles.

**16.14 Attorney Fees.** In any proceeding by which one party either seeks to enforce its rights under this Contract or seeks a declaration of any rights or obligations under this Contract, the prevailing party shall be awarded its reasonable attorney fees, costs, and expenses incurred.

**16.15 Injunctive and Other Equitable Relief.** The Parties agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be inadequate, and that in addition to damages, the other Party(ies) will be entitled to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.

**16.16 No Third Party Beneficiaries.** This Contract is made and entered into for the sole protection and legal benefit of the Parties. No other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Contract.

**16.17 Disputes.** Prior to commencing any legal action, the Parties shall attempt in good faith to resolve any dispute, claim or controversy arising out of or relating to this Contract through the following process: Either Party may initiate such negotiations by providing written notice to the other Party setting forth the subject of the dispute and the relief requested (the "Dispute Notice"). The Party receiving such notice will respond in writing within ten (10) business days with a statement of its position on and recommended solution to the dispute. If the dispute is not resolved by this exchange of correspondence, then representatives of each Party with full settlement authority shall meet at a mutually agreeable time and place within thirty (30) business days of the Dispute Notice to attempt in good faith to resolve the dispute.

**16.18 Arbitration.** Any dispute, claim or controversy arising out this Contract not settled by the negotiation process in Article 16.17(Disputes) will be settled by binding arbitration in accordance with the then effective rules of Arbitration Service of Portland, Inc. Judgment upon the award rendered by the arbitrator(s) may be entered in the court having jurisdiction as further defined in Article 16.19(Jurisdiction). Any hearing will be held in Portland, Oregon.

**16.19 Jurisdiction.** Subject to Article 16.17(Disputes) and Article 16.18 (Arbitration), each Party irrevocably submits to the exclusive jurisdiction of the Multnomah County Circuit Court or the United States District Court in Portland, Oregon, over any suit, action or proceeding arising out of or relating to this Contract, and confirms that such court has personal jurisdiction over such Party.

[SIGNATURE PAGE FOLLOWS]

**NORTHWEST ENERGY EFFICIENCY ALLIANCE, INC.**

**CONTRACTOR'S NAME**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

**Insert Printed Name**

Printed Name

\_\_\_\_\_  
Printed Name

**Insert Title**

Title

\_\_\_\_\_  
Title

**Address for Notices:**

Northwest Energy Efficiency Alliance, Inc.  
Attention: Legal Notice  
421 SW 6<sup>th</sup> Ave., Suite 600  
Portland, OR 97204

**Address for Notices:**

**Insert**

**Email for Notices (when permitted):**

**Insert**

**Email for Notices (when permitted):**

legal@neea.org

**Phone & Fax:**

**Insert**

**Phone & Fax:**

PH:503-688-5400 FAX: 503-688-5447

**Federal Tax ID#** \_\_\_\_\_