AGREEMENT

between

NEW ENGLAND INTERSTATE WATER POLLUTION CONTROL COMMISSION

and

## **«Contractor»**

 THIS AGREEMENT is made by the NEW ENGLAND INTERSTATE WATER POLLUTION CONTROL COMMISSION (NEIWPCC), having its principal office at 650 Suffolk Street, No. 410, Lowell, Massachusetts 01854, and «Contractor» (“Subrecipient”), having its principal office at «C\_Address», «C\_City», «C\_State» «C\_Zip»; (Tel: «C\_Phone»; Email: «Email»); Technical Contact: «Contact».

1. Scope of Work. The Contractor agrees to provide support to the International Joint Commission (IJC) in carrying out work outlined in Option B of the July 2013 Plan of Study (POS) for the Identification of Measures to Mitigate Flooding and the Impacts of Flooding of Lake Champlain and the Richelieu River to explore the causes, impacts, risks, and solutions more fully to flooding in the Lake Champlain-Richelieu River basin. Specifically, the Contractor will perform the services set forth in the Scope of Work attached hereto as Appendix III and incorporated herein by reference.

2. NEIWPCC Project Contact(s). The following NEIWPCC staff will provide the Contractor technical and administrative oversight of the work performed under this Agreement. The Contractor agrees to submit all deliverables and invoices required by this Agreement to the following NEIWPCC Project Contact(s):

|  |  |
| --- | --- |
| «Project\_Officer»«P\_Company»«P\_Address1»«P\_City», «P\_State» «P\_Zip»Tel: «P\_Phone» Email: «P\_Email»  | «Project\_Officer\_2»«PO2\_Company»«PO2\_Address»«PO2\_City», «PO2\_State» «PO2\_Zip»Tel: «PO2\_Phone» Email: «PO2\_Email» |

3. Duration of the Agreement. The Contractor agrees to not commence work prior to the date this Agreement is executed and to complete all work required by this Agreement by **«Contract\_End\_Date»**.

4. Compensation to the Contractor.

1. NEIWPCC’s obligation under this Agreement is for a total amount not to exceed **$«Federal\_Money»** for the duration of this Agreement (the “Contract Price”). NEIWPCC’s payment is contingent upon NEIWPCC’s receipt of funding under the Federal award.
2. NEIWPCC’s payments for work performed under this Agreement will be based on NEIWPCC’s approval of the Contractor’s invoices, receipt of the Contractor’s Form W-9, and receipt of a current insurance certificate as required by this Agreement. The Contractor agrees that the tasks will be completed before payment is sought, and that partial payment for individual tasks is not permissible under this Agreement.
3. The Contractor agrees to submit its invoices to the designated NEIWPCC Project Contact(s) for approval in accordance with the Payment Schedule. Invoiced expenditures must agree with the approved Task Budget. Invoices must include the following: (i) the Contractor’s name and address; (ii) the invoice date; (iii) the Agreement Project Code number, if any; (iv) the time period for the work covered by the invoice; (v) a description of the work performed; (vi) the applicable shipping and payment terms; (vii) the address where payment is to be sent; (viii) the person to be notified if the invoice contains a defect; (ix) itemized documentation of the costs associated with the work performed; (x) except with respect to the Final Invoice, a brief written progress report; and (xi) any data or other documentation NEIWPCC reasonably requests.
4. The parties agree to the following Payment Schedule:

[INSERT PAYMENT SCHEDULE]

OR REIMBURSEMENT:

|  |  |
| --- | --- |
| $[INSERT AMOUNT] | On a reimbursement basis following receipt and the NEIWPCC Project Contact’s or Contacts’ approval of the invoices and the Quarterly Reports and, as appropriate, Final Report, in accordance with ¶8 of Section III.  |
| $«Holdback» (The holdback is 10% of the Contract Price) | On the NEIWPCC Project Contact’s or Contacts’ approval of the Final Report in accordance with ¶8 of Section III.  |

**$«Federal\_Money» Total**

The Contractor agrees to submit the Final Invoice by **«Final\_invoice\_Due»** to NEIWPCC’s Project Contact for review.

The Contractor agrees to submit all invoices in accordance with the Payment Schedule and consistent with the Task Budget following completion of the enumerated tasks in accordance with the description in the Scope of Work. The Contractor acknowledges that NEIWPCC has no obligation to process invoices requesting partial payment for any one or more of the enumerated tasks.

The Subrecipient agrees to submit invoices to NEIWPCC no later than October 31st of each year for all tasks that were completed on or before September 30 of that year and not yet billed. NEIWPCC reserves the right to deny payment for all such completed tasks that are not invoiced by October 31st of each year as required.

1. The Contractor acknowledges that the Final Invoice must include all outstanding charges due for work on the project. NEIWPCC reserves the right to deny payment for any work on the project not captured by the approved Final Invoice.
2. The Contractor agrees that the Contract Price constitutes the total compensation payable by NEIWPCC to Contractor for the work required by this Agreement. The Contractor agrees to perform the work as set forth in the Scope of Work without any change in the Contract Price. The Contractor acknowledges that any charges incurred exceeding the Contract Price will not be subject to reimbursement under this Agreement.
3. The Contractor acknowledges that the Contract Price includes all applicable Federal, State, and local taxes, fees, and duties.
4. NEIWPCC agrees to pay all approved invoices within forty-five (45) days of receipt, provided that the invoice is approved by the NEIWPCC Project Contact(s) and accompanied by the corresponding Quarterly Report or the approved Final Report, as applicable. NEIWPCC may refuse to approve any part of an invoice if:
5. the work performed is defective or otherwise fails to meet the requirements of this Agreement;
6. the work performed is subject to any pending claim or the imminent filing of such a claim is reasonably certain; or
7. the invoice is otherwise inconsistent with the terms and conditions of this Agreement.
8. Payment will be based on receipt of a proper invoice and satisfactory contract performance.

5. Quarterly and Final Reports. The Subrecipient agrees to prepare the following written or electronic reports for submittal to the NEIWPCC Project Contact(s):

1. The Contractor agrees to submit one- to two-page Quarterly Reports following the template provided by the Project Officer by the 10th day after the end of each calendar quarter (i.e., by April 10 for January-March, by July 10 for April-June, by October 10 for July-September, and by January 10 for October-December). The Contractor agrees to describe in each Quarterly Report the progress of work through the quarter, the outputs completed, the problems encountered and anticipated, including the resolution of such problems identified, a summary of the activity planned during the next quarter, and a comparison of the percentage of the project completed with the project schedule. NEIWPCC’s payment of the Contractor’s invoices for work performed is contingent upon NEIWPCC’s timely receipt and approval of Quarterly Reports.
2. The Contractor agrees to submit to the NEIWPCC Project Contact(s) a draft Final Report that complies with the Scope of Work, and the terms and conditions of this Agreement, for approval no later than **«Final\_Report\_Due»**. The Contractor agrees to complete all tasks described in the Scope of Work prior to submittal of the draft Final Report.
3. The Final Report should follow a template provided by the Project Officer and include an executive summary suitable for a broad audience, describing the project, its results, and its measurable impacts over the project period, including development of tools and resources, data collected and how to access it, and any communication materials developed for the project. The Final Report should document project activities over the entire project period and should include information summarized from Quarterly Reports.
4. NEIWPCC agrees to promptly notify the Contractor of any deficiencies identified on review of the draft Final Report and of any revisions necessary.
5. The Contractor agrees to submit the Final Report and the Final Invoice for payment upon the NEIWPCC Project Contact’s or Contacts’ approval of the Contractor’s draft Final Report. The Final Invoice must include all non-federal match accounting and be clearly marked “Final.” NEIWPCC’s payment of the Contractor’s Final Invoice for work performed is contingent upon NEIWPCC’s timely receipt and approval of the Final Report. NEIWPCC reserves the right to deny payment of a late Final Invoice.

6. Insurance. Prior to the start of work, the Contractor agrees to procure, at its sole cost and expense, and always maintain in force during the term of this Agreement, policies of insurance as set forth in APPENDIX II hereto and incorporated herein by reference, written by companies authorized to issue insurance in Vermont or New York, as applicable (Admitted Carriers). NEIWPCC, at its sole discretion, may accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed surplus lines affidavit; provided that nothing herein shall be construed to require NEIWPCC to accept insurance placed with a non-authorized carrier under any circumstances. Upon award, the Contractor agrees to deliver to NEIWPCC evidence of such policies (i.e., a Certificate or Certificates of Insurance). In the event there is a claim asserted that is covered by insurance and upon request of NEIWPCC, the Contractor agrees to make available for inspection to NEIWPCC, at NEIWPCC headquarters during reasonable business hours, any applicable policy required by this Agreement. Throughout the duration of this Agreement, the Contractor agrees to notify NEIWPCC of any material changes to the policy or any cancellations prior to the expiration date. The Contractor agrees that any failure to comply with the requirements herein is cause for cancellation or termination of this Agreement. NEIWPCC reserves the right to withhold payments due under this Agreement for any such noncompliance.

7. Notifications. Unless otherwise expressly provided in this Agreement, any notice from one party to the other required or permitted to be given hereunder shall be in writing when delivered to the address, by e-mail, or by certified mail, return receipt requested, to the following addresses:

If to the Contractor:

«Contractor»

«Signatory\_Name»

«Signatory\_Title»

«C\_Address», «C\_City», «C\_State» «C\_Zip»

E-mail Address: «Email»

If to NEIWPCC:

NEIWPCC

650 Suffolk Street

Suite 410

Lowell, MA 01854

Attention: Susan Sullivan, Executive Director

E-mail Addresses: ssullivan@neiwpcc.org

With a copy to:

Lake Champlain Basin Program

54 West Shore Road

Grand Isle, VT 05458

Attention: «Project\_Officer»

E-mail Address: «P\_Email»

At any time, either party may designate a new recipient or address for the receipt of notices by providing written notice of such new recipient or address to the other party as provided herein.

8. NEIWPCC Standard Clauses. The Contractor agrees to comply with the NEIWPCC Standard Clauses attached hereto as APPENDIX I and incorporated herein by reference.

9. Federal Requirements. The Contractor agrees to comply with the following federal requirements:

a. Travel. The cost of any travel required to perform the work under this contract is deemed to be built into the cost of the deliverables. Travel will be conducted in conformance to the extent possible with Federal Travel Regulations. Contractor, or any subcontractors, employees, or agents of the Contractor, is required to hold valid passports and documentation necessary to cross the border. Contractor must make all necessary arrangements including border crossing documentation to transport personnel and equipment across the border for the work to be performed under this purchase order.

b. Save harmless provisions. To the extent permitted by law, the Contractor shall save harmless the IJC from suit or damage arising out of work performed under this contract or the way the work is performed, to the extent such suit or damage arises from the negligent act, error, or omission of Contractor. The Contractor shall not represent itself as an agent of the IJC or the Government of the United States with respect to dealings with others. The Contractor and all subcontractors shall certify compliance with all local, state, and federal rules which govern its activities as an independent vendor and contractor. Neither Party shall be liable for incidental, indirect, special, or consequential damages.

c. Exemption from U.S. Freedom of Information Act (FOIA) and its Canadian Counterpart legislation. As an international organization with a diplomatic mission, the IJC is exempt from the Freedom of Information Act (FOIA) and its Canadian counterpart. All requests of the Contractor(s) or others for information that would otherwise be treated under FOIA or its Canadian counterpart legislation shall be forwarded to the IJC for determination pursuant to the IJC Rules of Procedure for Availability of Records. The Contractor(s) shall protect all IJC information, data, and records, with respect to this contract.

d. Rights in data. The IJC maintains all rights in data. The IJC has the absolute right to publish, disseminate, and use the material produced under this contract as it sees fit, or to withhold this material from public access and release under Commission Rules of Procedure.

e. Standards of professional care. Contractor is obligated to comply with applicable standards of professional care in the performance of the services.

f. Inspection and acceptance. The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The IJC and NEIWPCC reserve the right to inspect or test any services that have been tendered for acceptance.

g. Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the contractor and without its fault or negligence, such as acts of God or the public enemy, acts of a government in its sovereign capacity, acts of the IJC or NEIWPCC in their contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify NEIWPCC in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the NEIWPCC Project Contact(s) of the cessation of such occurrence.

h. Notice of Listing Contract Clauses Incorporated by Reference. This contract incorporates one or more clauses by reference with the same force and effect as if they were given in full text. Specifically, the Contractor shall comply with the Federal Acquisition Regulation clauses listed below, if applicable:

52.202-1 Definitions

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity

52.204-7 System for Award Management

52.209.6 Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment

52.222-3 Convict Labor

52.222-41 Service Contract Act of 1965 (Applies to Service Contracts over $2500)

52.223-6 Drug-Free Workplace

52.225-13 Restrictions on Certain Foreign Purchases

52.232-1 Payments

52.232.11 Extras

15 52.232-23 Assignment of Claims

52.232-33 Payment by Electronic Funds Transfer – Central Contractor

52.233-3 Protest after Award

52.233-4 Applicable Law for Breach of Contract Claim

52.243-1 Changes – Fixed-Price (Alternate I)

52.244-6 Subcontracts for Commercial Items and Commercial Components

52.246-9 Inspection of Research and Development – Fixed-Price

52.249-5 Termination for Convenience of the Government (Research)

52.252-2 Clauses Incorporated by Reference

52.252-4 Alterations in Contract

52.253-1 Computer Generated Forms Jan 1991

The regulations are available on-line at <https://www.acquisition.gov/browse/index/far>.

IN WITNESS WHEREOF, the undersigned, having read this Agreement in its entirety,including all appendices hereto, if any, do hereby agree and certify as to having authorization to contract on behalf of the party represented.

**FOR NEW ENGLAND INTERSTATE WATER POLLUTION CONTROL COMMISSION**

Susan J. Sullivan, Date:

Executive Director

## **FOR «Contractor»**

«Signatory\_Name», Date:

«Signatory\_Title»

**APPENDIX I**

NEIWPCC Standard Clauses

**A. Work Outside the Scope of the Agreement.** The Contractor agrees to not perform work outside the scope of the Agreement, unless such work is authorized by a properly executed, amendment to the Agreement. The Contractor acknowledges that NEIWPCC cannot authorize payment for work that is not authorized by this Agreement or any amendment thereto.

**B. Notice of Circumstances Expected to Adversely Affect the Contractor’s Performance**. The Contractor agrees to immediately notify NEIWPCC upon learning of any circumstances that can reasonably be expected to adversely affect the Contractor’s delivery of services under this Agreement. If such notification is provided verbally, the Contractor agrees to follow the initial verbal notice with a written notice to NEIWPCC within three business days, including a description of the circumstances and the actions the Contractor is taking to address the matter.

**C. Warrantees and guarantees.**

* + 1. **Agreement Deliverables.** The Contractor warrants and represents that the work required by this Agreement will be performed in accordance with all terms and conditions contained in this Agreement.
		2. **Compliance with Laws**. The Contractor warrants and represents that, throughout the term of the Agreement, in the performance of its obligations under the Agreement, it will: (i) comply with all applicable laws, ordinances, rules and regulations of any governmental entity; (ii) pay, at its sole expense, all applicable permits, licenses, tariffs, tolls, and fees; and (iii) give all notices required by any laws, ordinances, rules, and regulations of any governmental entity.
		3. **Workmanship Warranty**. The Contractor warrants and represents that all services and deliverables will meet the completion criteria set forth in the Agreement and that services will be provided in a professional and workmanlike manner in accordance with the highest applicable industry standards.
		4. **Personnel Eligible for Employment**. The Contractor warrants and represents that all personnel performing work under this Agreement are qualified to provide such services and eligible for employment in the United States. The Contractor agrees to provide such proof of compliance as is required by NEIWPCC.
		5. **Survival of Warranties**. All warranties contained in the Agreement will survive termination of the Agreement.

**D. Indemnification, Limitation on Liability.**

1. **Indemnification.** To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless NEIWPCC, and its commissioners, agents, and employees (hereinafter referred to as “Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers’ Compensation Law or arising out of the failure of the Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against all Claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this Agreement, the Contractor agrees to waive all rights of subrogation against NEIWPCC, and its commissioners, agents, and employees for losses arising from the work performed by the Contractor for NEIWPCC. This section is not subject to the limitation of liability provisions of the Agreement.
2. **Indemnification for Intellectual Property Infringement.** To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless NEIWPCC, and its commissioners, agents, and employees (hereinafter referred to as “Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret, or other third-party proprietary right in relation to the services, products, documentation, or deliverables furnished or utilized by the Contractor under this Agreement. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against all Claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this Agreement, the Contractor agrees to waive all rights of subrogation against NEIWPCC, and its commissioners, agents, and employees for losses arising from the work performed by the Contractor for NEIWPCC. This section is not subject to the limitation of liability provisions of the Agreement.

**E. Consent to Post.** The Contractor consents to the posting of the Contractor’s project reports and submittals on NEIWPCC’s and LCBP’s websites and the funding source’s website. Notwithstanding the foregoing, if the Contractor claims that any such documents contain confidential information or trade secrets that is protected from disclosure, then the Contractor may notify the NEIWPCC Project Contacts and the project funding source of such claim at the time of submittal of such, and clearly mark each such document or the pertinent portion thereof as **“PROTECTED FROM DISCLOSURE,”** and include in its notice of claim the legal citation to the statutory and/or regulatory sources which provide the legal basis requiring NEIWPCC and the project funding source to provide such protection.

**F. Suspension or Cancellation of Awards.** With 30 days’ notice, NEIWPCC may discontinue or suspend funding, rescind payments made or demand return of any unspent funds based on any of the following: (a) the written reports required herein are not submitted to LCBP on a timely basis, (b) the reports do not comply with the terms of this Agreement or fail to contain adequate information to allow LCBP and NEIWPCC to determine if the funds have been used for their intended purposes, (c) contract funds have not been used for their intended purposes or have been used inconsistently with the terms of this Agreement, (d) LCBP or NEIWPCC is not satisfied with the progress of the activities funded by this Agreement, (e) the purposes for which the Agreement was made cannot be accomplished, or (f) making any payment might, in the judgment of NEIWPCC, violate the terms of NEIWPCC’s cooperative agreement with IJC, or otherwise expose NEIWPCC to liability. NEIWPCC will provide notice of any determinations made under this paragraph. In the event NEIWPCC takes action permitted by this paragraph solely based on (d) and (e), and Contractor provides documentation that it has incurred obligations consistent with the terms of the grant in good faith reliance on the Agreement and the approved budget, NEIWPCC will consider in good faith permitting contract funds to be used to pay such obligations.

**G. Termination.**

1. **For Convenience.** By written notice, this Agreement may be terminated, at any time, by NEIWPCC for convenience upon 30 days’ written notice, without penalty or other early termination charges due. If the Agreement is terminated pursuant to this paragraph, NEIWPCC shall remain liable for all accrued but unpaid charges incurred through the date of the termination.
2. **For Cause** For a material breach that remains uncured, as solely determined by NEIWPCC, for more than 15 days from the date of written notice to the Contractor, the Agreement may be terminated by NEIWPCC, at the Contractor’s expense, where the Contractor becomes unable or incapable of performing or meeting any requirements or qualifications set forth in the Agreement, or for non-performance, or upon a determination that the Contractor is non-responsible or for any of the other reasons stated in this paragraph. Such termination shall be upon written notice to the Contractor. In such event, NEIWPCC may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

**H. Default.**

1. If either party breaches a material provision of this Agreement, which breach remains uncured for a period of 15 days after written notice thereof from the other party specifying the breach (or if such breach cannot be completely cured within the 15-day period, such longer period of time approved by the non-breaching party, provided that the breaching party proceeds with reasonable diligence to completely cure the breach), or if the Contractor shall cease conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or shall avail itself of or become subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, then and in any such event, the other party may, at its option, terminate this Agreement upon 10 days’ written notice and exercise such other remedies as shall be available under this Agreement, at law and/or equity.
2. No delay or omission to exercise any right, power, or remedy accruing to either party upon breach or default by the other under this Agreement shall impair any such right, power, or remedy or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.
3. If, due to default that remains uncured for the period provided herein, a third party shall commence to perform the Contractor's obligations under this Agreement, NEIWPCC shall thereafter be released from all obligations to the Contractor hereunder, including any obligation to make payment to the Contractor; provided, however, that NEIWPCC shall continue to be obliged to pay for any and all work provided prior to any such date, and if any lump-sum payment has been made, NEIWPCC shall be entitled to a pro-rata refund of such payment.

**H. Nondisclosure.** The Contractor is prohibited from releasing any project work products to the public, including draft and/or final Quarterly or Final Reports, data, maps, and charts, without NEIWPCC’s prior written consent, except to the extent disclosure is required by federal or state law, regulation, or a court order.

**I. Press Releases.** The Contractor agrees that no brochure, news/media/press release, public announcement, memorandum, or other information of any kind regarding the Agreement shall be disseminated in any way to the public, nor shall any presentation be given regarding the Agreement without the prior written approval of NEIWPCC, which written approval shall not be unreasonably withheld or delayed provided, however, that the Contractor shall be authorized to provide copies of the Agreement and answer any questions relating thereto to any state or federal regulators or, in connection with its financial activities, to financial institutions for any private or public offering.

**J. Subcontracting.** Neither the whole nor any part of this Agreement may be further subcontracted by Contractor without the prior written consent of NEIWPCC.

**K. Independent Contractor Acknowledgement**. The Contractor acknowledges and agrees that the Contractor is an independent contractor and is not an agent, servant, or employee of NEIWPCC. The Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers’ compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities.

**L.** **Indirect Cost Rates.** For Contractors ***with*** a current Negotiated Indirect Cost Rate Agreement (NICRA) on file with a federal agency, budgets and amended budgets must maintain consistency with the NICRA and the requirements of the Request for Proposals (RFP). For Contractors ***without*** a current NICRA, budgets and amended budgets must maintain consistency with the requirements of the RFP and may not exceed 10% of Modified Total Direct Costs (MTDC). As provided in 2 CFR § 200.308, if there is a change in key personnel specified in the Scope of Work, or the Contractor's project director is absent for more than three months or reduces time devoted to the project by 25 percent or more, the Contractor must request prior written approval from NEIWPCC for those changes.

**M. Quality Assurance Project Plan (QAPP) Compliance.** In accordance with 2 CFR § 1500.11, the Contractor is responsible for developing and implementing quality assurance and quality control procedures, specifications and documentation that are sufficient to produce data of adequate quality to meet project objectives. If a QAPP is required, the Contractor must submit the QAPP to NEIWPCC at least 60 days prior to the initiation of data collection or data compilation. The QAPP must be completed and approved by NEIWPCC and IJC prior to direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology. The Contractor is responsible for identifying funded activities that fall under QAPP requirements and informing NEIWPCC of these activities. The Contractor may not commence work covered by the QAPP, and NEIWPCC may not reimburse the Contractor for such work, prior to QAPP approval by IJC. NEIWPCC may reimburse the Contractor for non-covered expenses, including costs to develop the QAPP itself, prior to approval.

**N. Water Quality Data.** The Contractor agrees to ensure that all water quality data that is generated in accordance with a NEIWPCC approved Quality Assurance Project Plan is transmitted into EPA’s Water Quality Exchange (WQX).

**O. Entire Agreement.** This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof. With respect to the Parties, this Agreement supersedes all inconsistent prior agreements with respect to the subject matter hereof, whether written or oral.

**P. Modification.** This Agreement may not be modified or amended except by an instrument in writing signed by the Parties. This Agreement may not be modified or amended orally.

**Q. Counterparts Clause.** This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

**R. Choice of Law**. The Agreement shall be governed by the laws of the Commonwealth of Massachusetts, except that any provision in this Agreement that refers to any federal law or agency rule or regulation shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies and quasi-judicial agencies of the federal government.

**S.** **NEIWPCC Covid-19 Policy**. The Contractor agrees to comply with the following NEIWPCC Covid-19 Policy:

OFFICE VISITORS

NEIWPCC is committed to providing a working environment that keeps all staff and visitors as safe as possible and promotes the well-being of our community. NEIWPCC encourages attendees to take CDC recommendations and their individual circumstances into account when deciding about preventative actions. It is recommended that all individuals who enter NEIWPCC offices during business hours be fully vaccinated, however this is no longer a requirement. Visitors should NOT enter the NEIWPCC office if they display any symptoms of COVID-19. Anyone who has tested positive for COVID-19 within the last ten (10) days must test negative prior to visiting the office.

CONFERENCE, MEETING, AND TRAINING ATTENDEES

NEIWPCC is committed to providing an event environment that keeps all participants as safe as possible and promotes the well-being of our community. It is recommended that all individuals who participate at NEIWPCC events be fully vaccinated, however this is no longer a requirement to attend. NEIWPCC encourages attendees to take CDC recommendations and their individual circumstances into account when deciding about preventative actions. By voluntarily choosing to attend NEIWPCC events, participants assume all risks associated with exposure to COVID-19. Attendees should NOT participate at NEIWPCC events if they display any symptoms of COVID-19. Anyone who has tested positive for COVID-19 within ten (10) days of the event must test negative prior to attending.

**T.** **NEIWPCC and LCBP Logos**. All products and materials (including but not limited to agendas, press releases, web pages) associated with this project and/or developed under this Agreement must include Lake Champlain Basin Program and NEIWPCC logos and contain the following statement: “This project has been funded wholly or in part by the International Joint Commission under an assistance agreement to NEIWPCC in partnership with the Lake Champlain Basin Program.” All publications associated with this project and/or developed under this Agreement must include the Lake Champlain Basin Program and NEIWPCC logos and contain the following statement: “This project has been funded wholly or in part by the International Joint Commission under an assistance agreement to NEIWPCC in partnership with the Lake Champlain Basin Program (LCBP). NEIWPCC manages LCBP’s personnel, contract, grant, and budget tasks and provides input on the program’s activities through a partnership with the LCBP. The contents of this document do not necessarily reflect the views and policies of NEIWPCC, the LCBP, or the IJC, nor does NEIWPCC, the LCBP or the IJC endorse trade names or recommend the use of commercial products mentioned in this document.” The provisions of this clause shall survive the expiration or earlier termination of this Agreement.

**APPENDIX II**

Insurance Specifications

**General Conditions**

**A.** **Conditions Applicable to Insurance.** All policies of insurance required by this Agreement must meet the following requirements:

**1. Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Contractor are specified below in Paragraph B – Specific Coverages and Limits.

**2.** **Policy Forms.** Policies must be written on an **occurrence** basis, except as may be otherwise specifically provided herein or agreed in writing by NEIWPCC. Under certain circumstances, NEIWPCC may elect to accept policies written on a claims-made basis, provided that, at a minimum, the policy remains in force throughout the performance of the services and for three (3) years after completion of the Agreement. If the policy is cancelled or not renewed during that time, the Contractor must purchase, at its sole expense, Discovery Clause coverage sufficient to complete the 3-year period after completion of the Agreement. Written proof of this extended reporting period must be provided to NEIWPCC prior to the expiration or cancellation of the policy.

**3.** **Certificates of Insurance/Notices.** The Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to NEIWPCC before commencing any work under this Agreement. Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice except for non-payment as required by law to NEIWPCC.

Certificates of Insurance shall:

a. be in the form approved by NEIWPCC;

b. disclose any deductible, self-insured retention, aggregate limit, or any exclusion to the policy that materially changes the coverage required by this Agreement;

c. specify the Additional Insureds and Named Insureds as required herein; and

d. when coverage is provided by a non-admitted carrier, be accompanied by a completed surplus lines affidavit, and signed by an authorized representative of the insurance carrier or producer.

**4.** **Primary Coverage.** All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to NEIWPCC for any claim arising from the Contractor’s work under this Agreement or because of the Contractor’s activities. Any other insurance maintained by NEIWPCC shall be excess of and shall not contribute with the Contractor’s insurance regardless of the other insurance clause contained in NEIWPCC’s own policy of insurance.

**5. Policy Renewal/Expiration.** At least two (2) weeks prior to the expiration of any policy required by this Agreement, evidence of renewal or replacement policies of insurance with terms no less favorable to NEIWPCC than the expiring policies shall be delivered to NEIWPCC in the manner required for service of notice in this Agreement. If at any time during the term of this Agreement the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Agreement or proof thereof is not provided to NEIWPCC, the Contractor shall immediately cease work on the project. The Contractor shall not resume work on the project until authorized to do so by NEIWPCC. Any delay, time lost, or additional cost incurred because of the Contractor not having insurance required by this Agreement or not providing proof of same in a form acceptable to NEIWPCC shall not give rise to a delay claim or any other claim against NEIWPCC. Should the Contractor fail to provide or maintain any insurance required by this Agreement or proof thereof is not provided to NEIWPCC, NEIWPCC may withhold further contract payments, treat such failure as a breach or default of this Agreement, and/or, after providing written notice to the Contractor, require the surety, if any, to secure appropriate coverage and/or purchase insurance complying with this Agreement and charge back such purchase to the Contractor.

**6.** **Self-Insured Retention/Deductibles.** Additional surety/security may be required in certain circumstances. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention. The Contractor agrees to provide to NEIWPCC a letter on the Contractor’s letterhead stating the Contractor is self-insured and containing language provided by NEIWPCC for such purposes.

**7.** **Subcontractors.** Should the Contractor engage a subcontractor, the Contractor shall endeavor to impose the insurance requirements of this document on the subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the subcontractor. Proof thereof shall be supplied to NEIWPCC.

**B.** **Specific Coverages and Limits.** The types of insurance and minimum policy limits shall be as provided below.

**1.** **General Liability.** Commercial General Liability Insurance (CGL) covering the liability of the Contractor for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this Agreement. The limits under such policy shall not be less than the following:

• Each Occurrence limit: $2,000,000

• General Aggregate: $3,000,000

• Products/Completed Operations should equal the General Aggregate limit

• Personal Advertising Injury: $1,000,000

• Damage to Rented Premises: $50,000

• Medical Expense: $5,000

Coverage shall include but not be limited to the following: premises liability; independent contractors; blanket contractual liability, including tort liability of another assumed in a contract; defense and/or indemnification obligations, including obligations assumed under this Agreement; cross liability for additional insureds; products/completed operations for a term of no less than three (3) years, commencing upon acceptance of the work, as required by this Agreement; explosion, collapse, and underground hazards; Contractor means and methods; and liability resulting from state labor laws.

The following International Organization for Standardization (ISO) forms must be endorsed to the policy:

• CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form

• CG 20 10 11 85 or an equivalent – Additional Insured-Owner, Lessees or Contractors (Form B)

Limits may be provided through a combination of primary and umbrella/excess liability policies. The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts.

Policies shall name NEIWPCC as Additional Insureds and such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term.

The CGL policy and any umbrella/excess policies used to meet the “Each Occurrence” limits specified above must be endorsed to be primary with respects to the coverage afforded the Additional Insureds, and such policy(ies) shall be primary to and non-contributing with any other insurance maintained by NEIWPCC. Any other insurance maintained by NEIWPCC shall be in excess of and shall not contribute with the Contractor’s or subcontractor’s insurance, regardless of the “Other Insurance” clause contained in either party’s policy of insurance.

**2.** **Automobile.** Comprehensive Business Automobile Liability Insurance covering liability arising out of any automobile used in connection with performance under this Agreement, including owned, leased, hired, and non-owned automobiles bearing, or under the circumstances under which they are being used, required by state Motor Vehicles Laws to bear license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least $2,000,000.00 each accident. The limits may be provided through a combination of primary and umbrella liability policies.

**3.** **Workers’ Compensation.** For work to be performed, the Contractor shall provide and maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the state Workers’ Compensation Law.

a. Evidence of Workers’ Compensation and Employers Liability coverage must be provided to NEIWPCC.

All forms are valid for one (1) year from the date the form is signed/stamped or until policy expiration, whichever is earlier.

**ACORD forms** are **NOT** acceptable proof of Workers’ Compensation coverage.

b. If the Contractor is legally exempt from obtaining Workers’ Compensation insurance coverage, the Contractor must provide evidence, such as a Certificate of Attestation, that state Workers’ Compensation and/or Disability Benefits Insurance Coverage is not required.

c. If the Contractor is self-insured, the Contractor must provide evidence, such as aCertificate of Workers’ Compensation Self-Insurance, available from the state Workers’ Compensation Board’s Self-Insurance Office, or a Certificate of Participation in Workers’ Compensation Group Self-Insurance, available from the Contractor’s Group Self-Insurance Administrator.

**4.** **Disability Benefits (Applicable in New York, Rhode Island, and any other state requiring employers to provide short-term disability insurance to workers only).** The Contractor shall provide and maintain coverage during the life of this Agreement for the benefit of such employees, as required by the state Disability Benefits Law.

a. Evidence of Disability Benefits coverage must be provided, such as a Certificate of Insurance Coverage under the state Disability Benefits Law. The Contractor must request its business insurance carrier to send this form to NEIWPCC.

b. If the Contractor is legally exempt from obtaining Workers’ Compensation Disability insurance, the Contractor must provide evidence, such as a Certificate of Attestation for State Entities with No Employees and Certain Out of State Entities that state Workers’ Compensation and/or Disability Benefits Insurance Coverage is not required.

c. If the Contractor is self-insured, the Contractor must provide evidence, such as a Certificate of Disability Benefits Self-Insurance.

All forms are valid for one (1) year from the date the form is signed/stamped or until policy expiration, whichever is earlier.

**All forms must name NEIWPCC as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).**

All required insurance must be written by company rating of “A-” or better rated by A.M. Best & Co., have a record of successful continuous operation, that is licensed, admitted (if coverage is provided by a non-admitted carrier, a surplus lines affidavit must accompany the certificate), and authorized to do business in the state where the work is performed, and is approved by NEIWPCC. Required coverage and limits must be put into effect as of the effective date of this Agreement and must remain in effect throughout the term of this Agreement, as determined by NEIWPCC. The Contractor must submit proof of required insurance coverage, and any renewals thereof, to NEIWPCC upon NEIWPCC’s request. The Contractor shall notify NEIWPCC of any material changes to the policy or any cancellations prior to the expiration date. The carrier shall also send notification of cancellation, termination, or failure to renew any policy in accordance with the policy provisions when practicable.

**APPENDIX III**

Scope of Work

[Insert the approved Workplan or Scope of Work]