

**FOCUS ON ENERGY / PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement is effective as of \_\_\_\_\_, 20\_\_ (“Effective Date”) by and between Aptim Government Solutions, LLC (“Aptim”), a Louisiana limited liability company with offices located at 1 South Pinckney Street, Suite 340, Madison, WI 53703, in its role as Administrator for Focus on Energy (hereinafter referred to as “Administrator”) and [Implementer Name](#) [Insert Implementer Name](#)), a INSERT TYPE OF ENTITY having its principal office located at [Insert Address](#) [Insert Address](#)) (hereinafter referred to as “Implementer”).

Capitalized Terms not otherwise defined shall have the meaning provided in the Focus on Energy *Policy Manual* available at [www.focusonenergy.com/administrative-resources](http://www.focusonenergy.com/administrative-resources).

This Agreement consists of (1) this signature page, (2) the following additional terms and conditions and (3) each Exhibit and Addendum to this Agreement.

**WE THE UNDERSIGNED PARTIES AGREE TO BE LEGALLY BOUND BY THIS AGREEMENT.**

**IMPLEMENTER**

**ADMINISTRATOR**

<b>By:</b>	<b>By: Aptim Government Solutions, LLC.</b>
<b>Date:</b>	
<b>Signature:</b>	
<b>Name:</b> <a href="#">Click or tap here to enter text.</a>	<b>Thomas Quasius</b>
<b>Title:</b>	<b>Director</b>

This Program Implementation Agreement (“Agreement”) is effective as of [Click or tap here to enter text.](#) and is:

**BETWEEN:** Aptim Government Solutions, LLC (“Aptim”; “Administrator”)  
1 South Pinckney Street, Suite 340  
Madison, WI 53703

**AND:** [Click or tap here to enter text.](#)

WHEREAS, Aptim (“Administrator”) is the contractor hired by the Statewide Energy Efficiency and Renewable Administration, Inc. (“SEERA”) to administer the Focus on Energy Program. [Click or tap here to enter text.](#) (“Implementer”) is the contractor hired to implement the [Click or tap here to enter text.](#) The Administrator and the Implementer may be individually referred to herein as a “Party” and collectively as the “Parties”.

WHEREAS, Implementer was selected by Administrator to design and administer a cost-effective energy efficiency Program; [Click or tap here to enter text.](#)

WHEREAS, Implementer has substantial experience designing and implementing energy efficiency and/or renewable energy programs; and

**FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, Administrator and Implementer, by and through their representatives, agree as follows:**

1. TERM OF AGREEMENT

1.1. The term of this Agreement shall be from [Click or tap here to enter text.](#) through [Click or tap here to enter text.](#)

2. GENERAL TERMS AND CONDITIONS

2.1. The General Terms and Conditions of this Agreement are set forth in Attachment A.

3. AMENDMENT

3.1. This Agreement, including the Scope/s of Work in Attachment B, may be amended by mutual agreement of the Parties at any time during the Term of Agreement. No changes, modifications, amendments or extensions in the terms and conditions of this Agreement, nor any Addendum to it, shall be effective unless reduced to writing and signed by duly Authorized Representatives of the Administrator and Implementer, unless otherwise provided for in this Agreement, and no course of dealing or course of performance shall be considered to alter the terms of this Agreement.

4. TYPE OF COMPENSATION AGREEMENT: Click or tap here to enter text.

**CHOOSE COST TYPE AND DELETE REMAINDER**

Contract Cost Structure	Financial Reporting by Line Item
Time and Materials	<p><b>Administrative Costs</b> * (required if total annual contract amount exceeds \$250,000)</p> <p><b>Incentives</b> (to be paid directly to Customers and Trade Allies by Fiscal Agent)</p> <p><b>Technical &amp; Customer Support</b></p> <ul style="list-style-type: none"> <li>• Technical &amp; Customer support labor *</li> <li>• Marketing *</li> <li>• Equipment *</li> <li>• Implementer Subcontractors and Vendors* (to be paid directly by Fiscal Agent)</li> <li>• Other direct costs *</li> </ul>
Fixed Unit /Fee	<p><b>Administrative Costs</b> shall not be invoiced to the Program</p> <p><b>Incentives</b> (to be paid directly to Customer, Trade Ally, or Implementer by Fiscal Agent)</p> <p><b>Technical &amp; Customer Support</b></p> <ul style="list-style-type: none"> <li>• Technical &amp; Customer support labor *</li> <li>• Marketing *</li> <li>• Equipment *</li> <li>• Implementer Subcontractors and Vendors* (to be paid directly by Fiscal Agent)</li> <li>• Other direct costs *</li> </ul>
Pay-for-Performance	<p><b>Administrative Costs</b> shall not be invoiced to the Program</p> <p><b>Incentives</b> (to be paid directly to Customer, Trade Ally, or Implementer by Fiscal Agent)</p> <p><b>Technical &amp; Customer Support</b></p> <ul style="list-style-type: none"> <li>• Technical &amp; Customer support labor *</li> <li>• Marketing *</li> <li>• Equipment *</li> <li>• Implementer Subcontractors and Vendors* (to be paid directly by Fiscal Agent)</li> <li>• Other direct costs *</li> </ul>
Combination of Above	

***\*Budget Line Item detail is posted in the Contract Tracking Tool Excel sheet located on The Grid, in the Implementer's Program's folder.***

5. Funds Payable/Available to the Program

5.1. **Payment.** In consideration of the Work that Implementer performs, Implementer shall receive payments from Fiscal Agent for satisfactory performance of the Work under the payment provisions specified in Attachment B, Scope of Work, which will be capped by the Total Contract Budget Amount and subject to the terms of the *Policy Manual*, including without limitation:

- 5.1.1. Total Contract Budget Amount:
    - Budget limits by Technical & Customer Support Line Items, and
    - Budget limits for Administrative Costs,
    - Budget limits for Incentives.
  - 5.1.2. Other than a shift in funds between Technical & Customer Support Budget Cost Line Items, the above may only be modified with an Addendum executed by each Party.
6. NOTICE TO PROCEED
- 6.1. Implementer may submit invoices for the Work only after a Notice to Proceed.
7. INVOICING AND PAYMENTS
- 7.1. In consideration of Work performed, Administrator will pay Implementer the fees set forth in Attachment B, attached hereto and herein incorporated by reference.
  - 7.2. **Invoice Requirements.**
    - 7.2.1. Implementer and their subcontractors must adhere to the invoicing direction in the Focus on Energy *Policy Manual* and Focus on Energy *Operational Procedures Guide* when submitting invoices.
    - 7.2.2. Invoice format must be in the Administrator-approved template, as directed by the Administrator and according to the timeframe set forth by the Administrator.
    - 7.2.3. Invoices shall consist, at a minimum, of cumulative and monthly spending by Program and Budget Cost Line Item, consistent with the Budget Cost Line Items identified in the Implementer's budget table contained in Attachment B.
    - 7.2.4. Implementers and their subcontractors shall submit a separate invoice detail for each Program and for each subcontractor, monthly.
    - 7.2.5. Only subcontractors that fall below the annual procurement threshold as defined in the *Policy Manual* are allowed to be billed as part of the Implementer's invoice on the subcontractor line item.
  - 7.3. **Final Date to Submit Invoices.** The final date for Implementer to submit invoices for this Agreement to the Administrator is reflected in the date provided by the Administrator in the approved schedule, under the Focus on Energy *Policy Manual*.

## 8. PAYMENT MODIFICATIONS

- 8.1. Any changes to Implementer total contract budget, incentive budget, or energy savings goals shall only be effective upon full execution of an Addendum.
- 8.2. Administrator reserves the right to suspend all payments to Implementer if required reports and deliverables are not provided to Administrator on a timely basis.
- 8.3. Implementer may seek Administrator's approval of reduction of the overall Agreement budget and associated savings or termination of the Agreement. Administrator may consider the following when seeking to reduce, suspend or terminate funding, including, but not limited to:
  - 8.3.1. **KPIs:** If Implementer does not meet KPIs as set forth in the Scope of Work, Attachment B. To evaluate this, Administrator will regularly review performance relative to KPIs; or
  - 8.3.2. **Timely and Accurate Reports, Invoices, Incentive Approvals and Agreement Deliverables.** If Implementer's reports, invoices, Incentive approvals (including incorrectly paid incentives), or Agreement deliverables are not timely, complete, accurate, or high quality, as reasonably determined by the Administrator; or
  - 8.3.3. **Changes to Net-to-Gross (NTG) Ratios or Measure-level inputs to the Cost-Effectiveness Calculator (costs, savings, expected useful lives).** If the Administrator determines that Program or Measure-level inputs and assumptions by the Implementer differ from those contained in the approved and finalized Program Cost-Effectiveness Calculator; or
  - 8.3.4. **Portfolio Rebalancing.** Even if Implementer is achieving energy savings goals, budget forecasts and all KPIs, Administrator may re-allocate funds to achieve residential and/or business portfolio-level energy savings goals and objectives, to include the per portfolio percent ownership threshold, as identified in the *Policy Manual*. If Administrator reduces funding or terminates the Agreement, Implementer shall provide Administrator with a status report of all Work that is underway by task, consistent with the tasks set forth in this Agreement. At Administrator's discretion, Implementer may proceed with Projects that are underway or authorize funding for Implementer to complete Projects.

## 9. IMPLEMENTER SUBCONTRACTOR CONTRACTS

Implementer shall not execute a contract with Implementer Subcontractor(s) without approval from the Administrator Compliance Manager. Implementer shall ensure that contracts contain the required flow down provisions as forth in the General Terms and Conditions of the Implementer's contract.

## 10. SCOPE OF WORK

- 10.1. Implementer agrees to provide the Administrator with the services as outlined in Attachment B, Scope of Work, attached hereto and incorporated by reference. Implementer shall provide

all deliverables and reports as may be required by the Administrator and outlined in the *Operational Procedures Guide*.

**11. DELIVERABLES AND TIMELINES**

Administrator may, upon mutual agreement in writing with the Implementer, modify deliverables or alter deliverable due dates set forth in the Scope of Work. In such cases, the Administrator will provide written approval following a written request within five (5) Business Days.

**12. IMPLEMENTER EXCEPTIONS to GENERAL TERMS AND CONDITIONS**

These terms prevail over other terms contained in the General Terms and Conditions.

Location in General Terms and Conditions	Approved Deviation from General Terms and Conditions

**13. NOTIFICATIONS REQUIRED UNDER THIS AGREEMENT**

The following notices shall be provided pursuant to this Article: insurance certificates, labor budget hold-back, and contract budget reduction or termination. Such notices may be delivered to Administrator or Implementer at the addresses below, as follows (a) personally; (b) by facsimile with confirmation of receipt; (c) e-mail with return receipt requested; (d) by mail if mailed postage prepaid by registered or certified mail; or (e) by nationally recognized overnight courier service. Either Party hereto may change the address for receipt of notice by giving notice pursuant to the provisions of this Article.

To: **Administrator**  
 Aptim Government Solutions, LLC (APTIM)  
 1 South Pinckney Street, Suite 340  
 Madison, WI 53703  
 Attn: Director of Operations – Focus on Energy  
[focuscompliance@aptim.com](mailto:focuscompliance@aptim.com)

To: **Implementer**  
 Click or tap here to enter text.  
 Click or tap here to enter text.  
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 Click or tap here to enter text.

## ATTACHMENT A: General Terms and Conditions

### 1. Definitions

When capitalized, whether in singular or plural, the following words and phrases shall have the following meanings in construing this Agreement:

- 1.1 **Achieved Savings** means savings for which a payment approval workflow has been completed in SPECTRUM, and SPECTRUM indicates the Incentive is “pending export” to the Fiscal Agent.
- 1.2 **Addendum** or **Addenda** means a written change to this Agreement, which is only effective when signed by an Authorized Representative of both the Implementer and Administrator.
- 1.3 **Administrative Cost(s)** means the costs not directly associated with a specific Program activity, but which are necessary to the development and administration of the Programs. Administrative costs include: record keeping, payroll, accounting, auditing, billing, business management, budgeting and related activities, overhead allocation and other costs necessary to direct the organization of the Program, but do not include Program evaluation. The Implementer shall assist the Administrator in tracking Administrative Costs incurred by the Program, and assist in reporting such costs upon request in a timely manner
- 1.4 **Administrator** means Administrator, the Contractor hired by SEERA to develop and administer the statewide Focus on Energy energy efficiency and renewable energy programs under Wis. Stat. §196.375(2)(a). See below.
- 1.5 **Agreement** means this contract and all Attachments hereto, as may be amended from time to time by mutual written consent of an Authorized Representative of each Party.
- 1.6 **Application** means a request for an Incentive for an eligible Measure(s) submitted by a Customer or Trade Ally.
- 1.7 **Authorized Representative** means a representative of a Party duly authorized to legally bind the Party.
- 1.8 **Budget Cost Line Items** means the Focus on Energy cost categories which include Technical & Customer Support, Administrative Costs and Incentives. The marketing Budget Cost Line Item does not include any labor associated with marketing or marketing materials production. Implementer Subcontractor costs must be allocated in the appropriate Budget Cost Categories on budgets and invoices. The Incentives Budget Cost Line Item includes Incentives paid to Customers and Trade Allies for Measures. For direct install Programs, the Incentives Budget Cost Line Item may also include the full cost of the Measure, and labor to install the Measure.
- 1.9 **Business Day(s)** means days not including Saturday, Sunday or a federal holiday. Unless otherwise specified, the presumption is that all references to days refers to business days.
- 1.10 **Business Program(s)** means a portfolio of Focus on Energy energy efficiency and renewable energy programs offered to Customers of Wisconsin Energy Utilities taking service on non-residential rates or tariffs, and Agricultural Producers on residential rates or tariffs due to a residence attached to an Agribusiness. Business Programs are designed to target commercial, industrial, Agricultural Producers, schools, Local Units of Government, and non-local government Customers.
- 1.11 **Commission** or **PSC** means the Public Service Commission of Wisconsin.
- 1.12 **Compliance Agent** means the Contractor that performs compliance audits to ensure Contractors, Subcontractors and Implementer Subcontractors comply with the *Policy Manual* and contractual requirements specified in their individual contracts.

- 1.13 **Confidential Information** means Customer-specific, non-public information and databases comprised of any information provided or made available by a party that (a) is marked as proprietary or confidential; (b) is orally identified as being confidential, followed by written confirmation of confidentiality within 30 days of such verbal identification, or (c) the receiving party knew or should have known under the circumstances was considered confidential or proprietary by the disclosing party.
- 1.14 **Contract Administrator** or **SEERA** means the Statewide Energy Efficiency and Renewables Administration, which is the legal nonprofit entity formed by the Energy Utilities to fulfill their obligations under Wis. Stat. §196.374(2)(a). SEERA creates and funds statewide energy efficiency and renewable energy programs. SEERA also contracts, on the basis of competitive bids, with one or more organizations to administer Focus on Energy.
- 1.15 **Contractor(s)** means an organization contracted directly with SEERA or the Commission. These organizations include, but are not limited to, the Administrator, Fiscal Agent, Program Evaluator, and Compliance Agent.
- 1.16 **Cost-Effectiveness Calculator** or **Calculator** means the MS Excel-based computer software tool that is used by Focus on Energy to calculate Program costs, savings and cost-effectiveness.
- 1.17 **Customer(s)** means an Energy Utility's Customer that is eligible to participate in one or more Focus on Energy Programs.
- 1.18 **Customer Information** is the Personal Information that may be associated with a Focus on Energy Customer and is considered Confidential Information, unless otherwise specified. Any unique identifying number, characteristic, code or combination that allows identification of an individual or business is considered Confidential Information. Examples of this include any of the following:
- SSN
  - FEIN
- Or any combinations of the following information that is not publicly available:
- Customer name
  - Primary, payment, or tax addresses
  - Telephone or fax numbers
  - Email addresses
  - Utility account numbers
  - Customer's Energy Usage Information
- 1.19 **Deliverables** mean any written or operational deliverables, materials or work product, including Program Materials and Workpapers, developed by Implementer pursuant to this Agreement.
- 1.20 **EERD Program** means the Environmental and Economic Research and Development Program. For the purposes of the EERD Program, parties performing Work will be referred to as Focus on Energy contractors, not Implementers.
- 1.21 **Effective Useful Life** means the median number of years of expected operation of a specific Measure, i.e. the time until half the units would be expected to have failed or been removed.
- 1.22 **Energy Utility** or **Energy Utilities** means investor-owned electric and/or natural gas utilities that provide energy to Customers in Wisconsin.
- 1.23 **Fiscal Agent** means the Contractor that, in a fiduciary capacity, receives funds, distributes funds and accounts for statewide energy efficiency and renewable energy programs specified under Wis. Stat. §196.374(2)(a).



- 1.24 **FOCUS ON ENERGY**<sup>®</sup> means the statewide energy efficiency and renewable energy programs specified under Wis. Stat. §196.374(2)(a).
- 1.25 **Focus on Energy Operational Procedures Guide** means the compilation of procedures, as amended and updated, which provides the day-to-day guidance for implementing the Focus on Energy Program and is to be followed by Administrator, Implementers, Implementer Subcontractors, and others working for the Focus on Energy programs.
- 1.26 **Focus on Energy Policy Manual** means the compilation of policies, as amended and revised, developed by Compliance Agent in conjunction with Administrator and the Commission, which provides the rules, regulations and policies of Focus on Energy to be followed by Administrator and its subcontractors, Implementers, Implementer Subcontractors, and others working for the Focus on Energy programs.
- 1.27 **Implementer** means the Subcontractor contracting with Administrator to implement the Focus on Energy Program.
- 1.28 **Implementer Subcontractor(s)** means an entity contracted with Implementer to implement the Work.
- 1.29 **Incentive(s)** means funds, provided by Focus on Energy to a Customer or Trade Ally, which enable or facilitate the implementation of an energy efficiency or renewable energy project.
- 1.30 **Incentive Application** means an application for the Program(s) for use by Customers.
- 1.31 **Incident** means an unauthorized access, suspected unauthorized access to, or alteration of Confidential Information, regardless of the form in which the data is kept or the nature of the unauthorized access. Access is considered unauthorized when it is made for any purpose other than the direct performance of obligations hereunder.
- 1.32 **Information Security Program** means appropriate operational, technical, and organizational measures to protect Confidential Information, whether in paper, electronic, or other form, against accidental, unauthorized, or unlawful access, disclosure, or alteration during its collection, storage, access, transmission, transportation, and destruction.
- 1.33 **Key Performance Indicators or KPI(s)**: a quantifiable measure used to evaluate the success of meeting objectives for Performance.
- 1.34 **Lifecycle Savings** means annual energy savings that are multiplied by the Effective Useful Life.
- 1.35 **Measure(s)** means an energy-using appliance, piece of equipment, audit, or practice that will result in measurable, reduced energy usage at a comparable level of service. Measures may also refer to Program-qualified Renewable Resources or tracking activity.
- 1.36 **MMBTU means** or MBTU, stands for one million British Thermal Units (BTU). A BTU is a measure of the energy content in fuel, and is used in the power, steam generation, heating and air conditioning industries.
- 1.37 **Notice to Proceed** or **NTP** means the earlier of (i) when Administrator provides an explicit notice to proceed in writing or (ii) when the Agreement is signed by both Parties.
- 1.38 **Party** or **Parties** means Administrator and Implementer, by and through their Authorized Representatives.
- 1.39 **Performance** means implementation of the Work consistent with the requirements established in this Agreement and Attachment B hereto and any applicable professional standards, and to the satisfaction of Administrator.
- 1.40 **Personal Information** means data or information which names, identifies or gives certain information from which a natural person could be identified, including, but not limited to: personally identifiable information that is protected under any Privacy Laws. Personal Data includes, but is not limited to, (i) name, phone number, address, email address, employer, or date of birth; (ii) non-public information, such as a passport number, social security number,

- or driver's license number; (iii) financial information, such as bank account numbers, bank account balances and transactions or information, credit card numbers and/or bank account numbers; and/or (iv) sensitive personal data, such as mother's maiden name, race, marital status, gender or sexuality.
- 1.41 **Policy Manual** refer above to the definition for the Focus on Energy *Policy Manual*.
- 1.42 **Privacy Laws** means federal, state or local data privacy or security statutes, order of court, or regulations.
- 1.43 **Program(s)** means the Focus on Energy Program(s) subject to this Agreement.
- 1.44 **Program Evaluator** means the third- party Contractor hired by the Commission to evaluate the Performance of all Programs administered by Administrator.
- 1.45 **Program Material(s)** means materials created for the Program, including but not limited to Program descriptions, web sites, fact sheets, brochures and advertisements.
- 1.46 **Project(s)** means a Measure or group of Measures on a single Incentive Application.
- 1.47 **Renewable Resource(s)** means, as defined under Wis. Stat. §196.378(1)(j), a resource that derives energy from any source other than coal, petroleum products, nuclear power except as used in a fuel cell, and natural gas. "Renewable Resource" includes resources deriving energy from any of the following: Solar energy, wind power, water power, biomass, geothermal technology, tidal or wave action or fuel cell technology that uses a renewable fuel, as determined by the Commission and as addressed in the Commission's ruling PSC REF#:163778 under Docket 5-GF-191.
- 1.48 **Residential Program(s)** means the Focus on Energy efficiency and renewable energy portfolio of Programs offered to Customers of the Wisconsin Energy Utilities taking service on residential rates.
- 1.49 **SPECTRUM (State Program for Energy Customer Tracking, Resource Utilization and data Management)** means the Focus on Energy Customer Management Relations system that all Implementers and Implementers Subcontractors are required to use for tracking and managing energy savings and usage; Customer relations; energy efficiency and renewable energy projects; Incentive payments and processing; Incentive approvals; Customer, property and utility information; marketing initiatives; workflows; approved Trade Allies; and contractor invoicing, budgeting approval and payment.
- 1.50 **Subcontractor(s)** means an organization contracted with a Contractor to do the Work in this Agreement. For the purpose of this Agreement, a Subcontractor is the Implementer.
- 1.51 **Technical & Customer Support refers to** the Budget Cost Line Items comprised of these Line Items: technical & Customer support labor, equipment, marketing, Implementer Subcontractor, Vendor and other direct costs (and is further defined in the *Policy Manual*). See also Budget by Cost Category.
- 1.52 **Term of Agreement** is from January 1, 2019 to December 31, 2019, to be renewed automatically unless terminated by the Contract Administrator.
- 1.53 **Total Contract Budget Amount** is defined in Attachment B of this Agreement.
- 1.54 **Trade Ally** or **Trade Allies** means any independent organization that participates in the Program to enable the delivery of the Program to end use Customers including, but not limited to, HVAC, insulation, and electrical contractors, builders, and retailers.
- 1.55 **Work** means Implementer's functions, duties, and activities as set forth in the General Terms and Conditions, Scope of Work, and any other Attachments to this Agreement.
- 1.56 **Workpapers** means papers submitted by Implementer to Administrator that contain detailed justifications for any Measure-level savings values contained in the Focus on Energy Cost-Effectiveness Calculator and SPECTRUM. The justifications include engineering calculations,

values from prior evaluation, measurement and control (EM&V) studies, or other technical documentation deemed sufficient by the Administrator technical review group and Focus on Energy Program Evaluator.

## 2. Resources for Scope of Work

Implementer shall furnish all necessary personnel, services, licenses, transportation and other necessary resources (except as is otherwise provided herein) to accomplish the Scopes of Work set forth in Attachment B. Changes to the Work may be made only by written Addendum to this Agreement, signed by an Authorized Representative of Administrator and Implementer.

## 3. Performance Standards

Implementer shall perform the Work consistent with the requirements established in this Agreement and Attachment B, any applicable professional standards, any applicable local, state or federal laws or requirements, and to the reasonable satisfaction of Administrator.

3.1 **Policy and Procedures.** Implementer shall in all ways follow and comply with the terms of the *Policy Manual* and *Operational Procedures Guide*. Implementer shall obtain and retain written statements upon hiring from anyone it employs to perform the Work and from Implementer Subcontractors, stating that the employee or Implementer Subcontractor understands and will be bound by the Agreement flow down terms identified in Article 29, and the *Policy Manual* and *Operational Procedures Guide*.

### 3.2 Coordination with Other Programs

3.2.1 Implementer shall coordinate its Performance of the Work across the Focus on Energy Business and Residential Programs and shall seek to educate Customers about and encourage Customers to participate in other Focus on Energy programs.

3.2.2 Implementer shall coordinate with other energy efficiency programs in Implementer's service territory, including programs offered by other utilities and local governments, and programs targeting low-income Customers, where applicable. Coordination shall include enhancing consistency in Program offerings to minimize duplicative administrative costs, and enhancing the possibility that Programs can be marketed together to avoid duplicative marketing budgets.

3.2.3 During Program implementation, Implementer shall not knowingly create market barriers or lost opportunities for other Programs. If Administrator determines that Implementer's Program may be creating market barriers or lost opportunities, Implementer shall make Program changes to minimize market barriers or lost opportunities.

### 3.3 Claims Substantiation

3.3.1 Implementer represents that it has adequately substantiated all claims made as part of the Work according to the requirements of state and federal law. Implementer shall substantiate claims made in all Program Materials. Claims include, but are not limited

to, statements about the energy efficiency, safety, reliability, or performance of a piece of equipment or category of energy efficiency Measures.

- 3.3.2 For each Program Material submitted to Administrator for review and approval, Implementer shall identify all claims, and shall submit to Administrator written evidence and data to substantiate the claims. If Administrator determines that the evidence or data that Implementer has submitted to Administrator is inadequate to substantiate the claim, then Implementer shall either provide additional evidence or data that in Administrator’s discretion is adequate to substantiate the claim, or redraft or eliminate the claim so that the data and evidence, in Administrator’s discretion, adequately supports the claims made.

#### 4. Reporting Requirements

Reporting Requirements are specified in Attachment B, the Scope of Work, and as may be further outlined in the reporting requirements set forth in *Operational Procedures Guide*. Reporting requirements may change from time and will be communicated in writing by the Administrator to Implementer.

#### 5. Records Available for Audit and Inspection

- 5.1 Implementer shall maintain, and shall cause each of its Implementer Subcontractors to maintain, accurate and complete records, books, documents, payroll papers, accounting records and materials, invoices, receipts, copies of contracts Program Implement Subcontractors, and other evidence pertaining to the costs it incurs under this Agreement and all transactions related hereto, or to the costs it incurs under this Agreement (collectively, and whether in tangible, digital or electronic form, the “Records”), under *Policy Manual* and with Generally Accepted Accounting Principles consistently applied, and to be retained by Implementer and its Implementer Subcontractors throughout the term of this Agreement and for six (6) years following its termination or expiration.
- 5.2 Implementer shall make, and shall cause each of its Implementer Subcontractors to make all such Records available upon request at reasonable times and from time to time during the Term of Agreement and for six (6) years thereafter for inspection by Contract Administrator, Administrator, Commission, Compliance Agent, Program Evaluator, Fiscal Agent or any of their respective authorized representatives or agents.
- 5.3 If any litigation, claim, or audit begins on or before six (6) years after this Agreement terminates, the Records shall be retained by the Implementer and its Implementer Subcontractors until all litigation, claims or audit involving the Records have been resolved.
- 5.4 Implementer shall include in all contracts with Implementer Subcontractors a provision that states that the records of the Implementer Subcontractors related to the Work shall be subject to audit and examination during the Term of Agreement and for a period of six (6) years after final payment under the relevant subcontracts.

- 5.5 The provisions in this Article shall also apply upon expiration or termination of this Agreement.
- 5.6 Implementer shall notify Administrator and the Commission in writing of any planned conversion or destruction of any Records at least ninety (90) days prior to such action, but Implementer may not convert or destroy any Records it is required to maintain and retain. Any charges for copies provided by Implementer of books, papers, records, computer files, computer printouts or other Records pursuant to this Article shall not exceed the actual cost thereof to Implementer and shall be reimbursed by Fiscal Agent. Implementer shall cooperate fully, and shall cause each of its Implementer Subcontractors to cooperate fully, in all inspections and audits, including without limitation by making their respective personnel available for questioning by the auditor(s).
- 5.7 Implementer must maintain sufficient segregation of Records from other projects or Programs. Implementer's obligations pursuant to this Article shall survive termination or expiration of this Agreement for a period of six (6) years after the termination or expiration of this Agreement. This Article shall survive the term of this Agreement.
- 5.8 If, pursuant to this Article, Implementer receives a request for Records during the Term of Agreement, for six (6) years thereafter, or after all litigation, claims, or audits, whichever is later, Implementer shall provide the request to Administrator with a proposed not-to-exceed budget for responding to the request for Records for Administrator review and approval. Implementer may invoice Administrator for costs associated with responding to a request for Records during the Term of Agreement as long as Implementer costs do not exceed the Total Contract Budget Amount approved by Administrator. The budget for responding to a request for Records shall not increase the Total Contract Budget Amount.
- 5.9 Implementer shall provide financial records listed above upon request no later than five (5) Business Days after request

## 6. [Ownership of Data, Records, Intellectual Property and Energy Savings; Confidential Information; Data Security](#)

### 6.1 **Work Product**

- 6.1.1 All Deliverables and Work by Implementer Subcontractors, including logos, trademarks, service marks, data, records originated, developed or prepared by Implementer or Implementer Subcontractors, or jointly by Implementer, Implementer Subcontractors, Administrator, Subcontractors, and the Commission or its agents pursuant to this Agreement, including but not limited to papers, outlines, drawings, sketches, artwork, plans, photographs, specifications, estimates, reports, charts, surveys, results, computer databases and spreadsheets or similar documentation, and any Work product determined by the Commission to be necessary to the success of the Program approved for implementation by the Commission, shall be deemed to be the Commission's sole property. Implementer may resell a Work product only with the Commission's prior written approval; if Implementer resells any Work product, ninety

percent (90%) of the funds received from such sale shall be used by Implementer as a credit on its monthly invoice. The remaining ten percent (10%) shall be retained by Implementer.

- 6.1.2 Notwithstanding any other language in this Agreement, all existing Implementer intellectual property and proprietary material, provided that it has been identified in advance in writing to Administrator as such with reasonable particularity, which shall include each page or worksheet being labeled as Implementer's intellectual property, shall remain the sole property of Implementer, and nothing in this Agreement shall be construed as giving the Commission any right or form of ownership to such intellectual or proprietary property.

## 6.2 Warranties

Implementer warrants that (a) all Performance by Implementer (including Implementer Subcontractors) pursuant to this Agreement shall be performed in a professional and workmanlike manner using due care and consistent with the standards of Implementer's industry, using appropriately trained and qualified personnel; (b) the Deliverables shall conform in all respects to the specifications and requirements set forth in the applicable Scopes of Work; (c) neither Implementer's Performance nor the Deliverables shall infringe any copyright, patent, trade secret or other intellectual property right of any third-party; and (d) Implementer's performance of all the terms of this Agreement will not result in a breach of any agreement to keep in confidence proprietary information, knowledge or data acquired by Implementer in confidence or in trust.

## 6.3 Contract Administrator Ownership

Implementer acknowledges and agrees that Contract Administrator is the sole owner of all databases, Program participant information, Customer usage information, and similar data developed or delivered in connection with Programs to be administered (all of which shall be deemed to be Confidential Information), and Implementer shall acquire no rights of ownership in any such materials, and shall provide all such materials to the Administrator, upon request.

## 6.4 Equipment, Software and Materials Purchased Under This Agreement

- 6.4.1 Title to equipment or materials purchased directly with funds provided under this Agreement shall vest in SEERA's name, unless otherwise specified by an Addendum to this Agreement. Disposition of any such equipment or materials shall be under applicable State of Wisconsin property disposal procedures, unless otherwise specified by an Addendum to this Agreement.
- 6.4.2 SEERA has full recovery rights to all direct cost purchases by Implementers. The direct cost purchases shall be transferred to the contracting agency's custody within 45 days of the contract terminating.

6.4.3 If SEERA chooses not to recover residual inventory, such as unused supplies or other expendable property, the Implementer may retain or sell the unused product, upon direction of SEERA, and shall compensate SEERA for its share. The amount of compensation shall be computed in the same manner as if the inventory was purchased based on current market value

#### 6.5 **Research Reports or Similar Publications**

Any research report, conference presentation, journal paper or other similar publication prepared or released in written form by Implementer or Implementer Subcontractors that identifies the Commission or Contract Administrator, or relies on data acquired from Performance of this Agreement by Implementer or Implementer Subcontractors, shall be reviewed and approved by Administrator, in writing, prior to release. The Administrator shall not unreasonably withhold or delay approval.

#### 6.6 **Energy Savings Resulting from this Agreement**

Implementer acknowledges and agrees that SEERA is the sole owner of any energy savings resulting from this Agreement.

#### 6.7 **Confidentiality**

6.7.1 **Obligation.** Each Party shall keep confidential and, except for the purpose of fulfilling its obligations or exercising its rights under this Agreement, shall not disclose to any third-party for use for its own benefit or for the benefit of any third-party, any Confidential Information of the other Party, and of Customers, Trade Allies, Implementers, and Implementer Subcontractors. Each Party shall limit access to Confidential Information to those of its employees or agents who have a need for such Confidential Information, and who are under a duty of confidentiality at least as restrictive as the confidentiality obligations set forth in this Agreement. Each Party agrees that the specific terms of this Agreement are Confidential Information and will not be disclosed to third parties.

6.7.2 **Exclusions.** The above confidentiality obligations shall not apply to information requested by the Commission provided the Commission affords the disclosed Confidential Information protection to the extent allowed by law. The above confidentiality obligations shall also not apply to information that (a) is or becomes generally known or available through no act or failure to act by the receiving Party; (b) is already known by the receiving Party at the time of receipt as evidenced by its records; (c) is furnished to the receiving Party by a third-party, as a matter of right and without restriction on disclosure; or (d) is disclosed with the written permission of the Party providing the Confidential Information. In addition, the receiving Party shall be entitled to disclose Confidential Information pursuant to a requirement of a governmental agency or law, provided the receiving Party, to the extent permitted by

law, provides prompt written notice to the disclosing Party of such requirement or law so as to afford the disclosing Party an opportunity to intervene and oppose or limit disclosure and/or obtain a protective order.

6.7.3 **Injunctive Relief.** The Parties acknowledge that a breach or threatened breach of this Article by either of the Parties may cause the non-breaching Party to suffer irreparable harm and injury such that no remedy at law will adequately compensate the other Party. Thus, the non-breaching Party shall have the right to obtain injunctive relief regarding such breach or threatened breach, in addition to damages and other remedies.

6.7.4 **Personnel.** Implementer shall conduct background investigations in accordance with federal, state and local laws regarding background investigations, as may be required for employment.

6.7.5 **Return of Information.** The Implementer shall ensure that its employees and those of its Implementer Subcontractors turn over to their employer all electronic and hard copy Focus on Energy data, and all copies thereof, upon termination of employment. This includes but is not limited to: mailing lists, contact information, papers, outlines, drawings, sketches, art work, plans, photographs, specifications, estimates, reports, charts, surveys, survey results, computer databases and spreadsheets and similar documentation.

## 6.8 Sections Survive Expiration or Termination of This Agreement

The terms of this Article, sections 6.1 through 6.5 above, shall continue in effect for a period of two (2) years after the expiration or termination of this Agreement. The terms of this Article, sections 6.6 and 6.7 above, shall survive after the expiration or termination of this Agreement for two (2) years.

## 7. Information Technology Systems

7.1. The Implementer will implement security protocols consistent with those established in the *Policy Manual* and compliant with Privacy Laws for any Customer Information that is downloaded from or stored outside of SPECTRUM that is under Implementer's control.

7.2. The Implementer shall maintain sufficient information technology systems (software, hardware, network speeds, etc.) to enable them to fully access and utilize SPECTRUM. The connectivity speed of the Implementers and its subcontractors may be tested if required by the *Policy Manual*.

7.3. No software license purchase or IT systems development may occur by the Implementer Subcontractor using Focus on Energy funds without a waiver being obtained from the Administrator.

### 7.4. Information Security Program

7.4.1 Administrator will ensure appropriate controls are in place to protect against unauthorized access and use of Customer Information. Per the terms of the *Policy*



*Manual*, the Administrator will require that any persons it authorizes to have access to the Customer Information complete required trainings and documentation.

- 7.4.2 Implementer shall have implemented and maintain an Information Security Program. The Information Security Program shall include, but not be limited to encryption, redaction, secure user authentication protocols, up to date firewall protection, physical safeguards, training, prohibition on saving Confidential Information on thumb drives, and any other necessary controls.
- 7.4.3 All Customer Information will be stored on Implementer and Implementer Subcontractor's servers in the United States unless the Licensee gives prior written approval for storage outside the U.S.
- 7.4.4 Implementer shall designate one or more employees to maintain the Information Security Program.
- 7.4.5 Implementer shall monitor the effectiveness of the Information Security Program, to include, but not be limited to:
- Regularly testing, at least annually, or as otherwise required by the *Policy Manual*.
  - Periodically identify and record reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of Confidential Information,
  - Ensure appropriate safeguards are in place to control identified risks.
  - Monitor and ensure that all Implementer staff comply with the Information Security Program.
  - Review and update the Information Security Program at least annually or whenever there is a material change in its business practices or laws that may reasonably impact the Information Security Program.
- 7.4.6 Implementer shall implement policies related to collection, storage, access, transmission, transportation, and destruction of Confidential Information, including appropriate monitoring to ensure compliance with such policies and laws as part of its Information Security Program.

## 7.5 **IT / Cybersecurity Assessment.**

Implementer will work with Administrator to facilitate the Program's "readiness assessment". Implementer will ensure the Information Security Program point of contact coordinates with the Administrator as may be necessary to facilitate the readiness assessment and ensuing testing.

## 7.6. **Notice of an Incident**

Implementer shall notify Administrator in writing within 24-hours after becoming aware of the occurrence of any suspected Incident and shall strictly adhere to the *Policy Manual* and *Operational Procedures Guide* and guidance from the Administrator.

Implementer will investigate the reasons for and circumstances surrounding the Incident and take necessary actions to prevent, contain, and mitigate the impact of the Incident. Implementer will collect and preserve evidence concerning the Incident, including documentation regarding incident response and remedial actions taken.

#### **7.7. Compliance with Privacy Laws**

Implementer acknowledges that the data to which it will have access pursuant to this Agreement may contain Personal Information, the use of and access to which is subject to Privacy Laws. Implementer agrees to abide strictly by all such Privacy Laws pertaining to Personal Information, as they are promulgated and applied, currently and in the future, and to implement appropriate mechanisms to comply therewith as part of its Information Security Program. Furthermore, Implementer shall execute any and all agreements, notices, consents, and other documents necessary for Administrator's and Implementer's compliance with any Privacy Laws. If Implementer's use (whether directly or indirectly) of Personal Information is contrary to any Privacy Law or any of the restrictions set forth in this Agreement, Administrator shall have the right to terminate this Agreement for cause if such breach has not been cured within five (5) business days of receipt by Implementer of written notice, and pursue any other legal and equitable remedies.

#### **8. Notification of Program Changes**

The Implementer shall notify and seek approval from the Administrator prior to changing any management or senior staff or the Implementer Subcontractors. The Implementer shall notify the Administrator in writing within fifteen (15) days of the Implementer's gaining knowledge of any change in status of any of the Implementers, or any of the Implementer Subcontractors, it being understood that the Implementer shall use commercially reasonable efforts to learn of such changes in status as promptly as possible, and shall contractually require Implementer Subcontractors to inform Implementer of such changes as soon as they occur.

The term "change in status" as used herein means, without limitation: (A) the sale of a majority of the issued and outstanding shares of voting equity interests of an entity; (B) the reorganization, merger or consolidation of an entity, unless immediately following such business combination all or substantially all the individuals and entities who were the beneficial owners of that entity immediately prior to such business combination beneficially own, directly or indirectly, a majority of the issued and outstanding shares of voting equity interests of such entity; (C) the sale or transfer of all or substantially all the assets of an entity; (D) the occurrence of any other event whereby the person or group of persons who ultimately own or control an entity prior to such occurrence no longer has the right or ability to control or cause the direction of the management and policies of that entity; or (E) the Implementer starts using a new subcontractor or terminates a subcontractor.

#### 9. No Gifts or Gratuities

Neither the Implementer nor any of its employees, agents, or Implementer Subcontractors shall give title to or possession of any gifts or gratuities of substantial value (i.e., in excess of \$50) (including property, currency, travel/or education Programs) to any employee of the Administrator, Contract Administrator, the Commission, the Evaluator, the Compliance Agent or the Fiscal Agent during the term of this Agreement.

#### 10. Use of the “Focus on Energy<sup>®</sup>” Name

The official name of the statewide energy efficiency and renewable energy resources Programs is “Focus on Energy<sup>®</sup>.” This is the only identifying name that shall appear on all Program marketing materials. The name of Implementer and Implementer Subcontractors or their affiliates shall not appear on any Focus on Energy marketing materials or other documents provided to Customers served by Implementer or Implementer Subcontractors and affiliates. The intent of this requirement is to have one name and one identity for the energy efficiency and renewable resource Program in order to prevent confusion among Customers served by Implementer or Implementer Subcontractors and affiliates when Implementer and Implementer Subcontractors and affiliates are providing Program services.

#### 11. Focus on Energy Code of Conduct

Implementer is responsible for ensuring that all employees and agents, and Implementer Subcontractors and their employees and agents, comport themselves with professionalism and courtesy at all times while conducting Focus on Energy business. This shall include, but is not limited to, ensuring neat and appropriate dress and grooming; absolutely no use of profanity or disrespectful speech or gestures under any conditions; and not criticizing Focus on Energy programs, staff or activities in any manner that can be communicated to Customers or the public. Furthermore, Implementer shall strive to resolve differences in a respectful and fair manner. Implementer and Implementer Subcontractors shall not give to or receive gifts, favors or compensation from Customers, or any other quid pro quo arrangement that is related to the Focus on Energy Program. Implementer shall not sell to Customers non-Focus on Energy products and services while interacting with Customers regarding Focus on Energy business.

#### 12. Participation in Commission and Legislative Proceedings

If requested by the Administrator or Commission, the Implementer shall provide data request responses, documentation and/or testimony at Commission and/or legislative proceedings on energy efficiency issues in its capacity as Implementer for the Focus on Energy Program(s) pursuant to the Scope of Work. Implementer’s obligations pursuant to this Article shall survive for three (3) years following termination or expiration of this Agreement. Any requests shall provide reasonable and adequate notice, and requests for documentation or testimony shall be compensated at Implementer’s then current rate, which shall not exceed the rates set forth herein by more than five percent (5%) per annum, plus any reasonable expenses at cost.

### 13. Media Appearances

The Implementer shall present itself, and shall cause its Implementer Subcontractors to present themselves, as representatives of Focus on Energy when they deal with the media, the public and Customers regarding the Program. In media dealings that involve Focus on Energy funded activities, the Implementer and its Implementer Subcontractors shall clearly state and identify that the activity or Program is funded by Focus on Energy.

### 14. Financial Audit

On an annual basis, the Implementer shall at its expense undergo a certified financial audit performed utilizing Generally Accepted Accounting Principles and Generally Accepted Auditing Standards. The Implementer shall provide the Commission and the Contract Administrator with a copy of the audit report for each such audit within sixty (60) days after the completion of the audit.

### 15. Prohibition of Assignment

Implementer may not assign, subcontract, pledge, transfer, or hypothecate this Agreement or any interest of Administrator herein, whether pursuant to a change of control, by operation of law or otherwise, including any interest in funds belonging to or which may accrue to Administrator, without the prior written consent of Administrator. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns.

### 16. Waiver

Failure or delay on the part of either Party to exercise any right, power, privilege or remedy shall not constitute a waiver thereof. A waiver of any default shall not operate as a waiver of any other default or of the same type of default on a future occasion.

### 17. Survival of Requirements

Unless otherwise authorized in writing by Contract Administrator and approved by the Commission, the terms and conditions of this Agreement shall survive the Term of Agreement and shall continue in full force and effect until Implementer has completed, and is in compliance with, all its requirements, or, if applicable, until the end of the applicable time period specified in the Article, *Ownership of Data, Records, Intellectual Property and Energy Savings; Confidential Information; Data Security*, Section "Return of Information."

### 18. Risk of Loss; Indemnification

The Administrator, Subcontractors, Contract Administrator and the Commission at no time assume risk of loss for any personal property including, but not limited to, owned equipment, leased/rented/borrowed equipment, tools, employee tools and clothing of Implementer, Implementer Subcontractors, or their employees whether or not at the site of the Administrator, Contract Administrator or the Commission.

Implementer shall indemnify and hold harmless the Administrator, Subcontractors, Contract Administrator and the Commission and all their respective officers, members, directors and

employees (the “Indemnified Parties”) from all suits, actions, or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from the operations of Implementer, or any of its agents or Implementer Subcontractors, in performing Work under this Agreement.

Implementer shall indemnify and hold harmless the Indemnified Parties from (i) all suits, actions or claims of any character brought for or on account of any obligations arising out of Agreements between Implementer and Implementer Subcontractors to perform services or otherwise supply products or services, and (ii) any audit disallowances related to the allocation of administrative costs under this Agreement, irrespective of whether the audit is ordered by federal or state agencies or by a court, and all reasonable attorneys’ fees and costs related thereto.

Implementer shall expressly protect, indemnify, and hold harmless the Indemnified Parties from any and all claims, demands, suits, liability and expense by reason of injury to or death of any agent or employee of Implementer or Implementer Subcontractors of any tier while performing Work under this Agreement, including claims, demands and actions founded upon or growing out of the claim or assertion that any Indemnified Party did not furnish or afford at such premises a safe place of Work or employment or requisite statutory safety in a public building, or were otherwise either solely or jointly negligent; Implementer further will perform the Work under applicable safety rules and will indemnify and hold harmless the Administrator, Subcontractors, Contract Administrator and the Commission, their officers, agents, and employees from any civil penalties which may be assessed for violations of the Occupational Safety and Health Act of 1970 and any amendments thereto, or any standards, rules or orders promulgated, or regulations prescribed pursuant thereto, where such violations exist either solely or partially by reason of any acts or omissions of Implementer, its officers, agents, employees or Implementer Subcontractors of any tier, and all reasonable attorneys’ fees and costs related thereto.

Implementer shall defend, indemnify and hold harmless the Administrator, Subcontractors, Contract Administrator and the Commission for any Incident, fraud, theft, stealing, diverting, embezzling, unlawful taking, unlawful distribution, computer fraud, forgery, voluntary parting, funds transfer, fraud or misappropriation of funds by Implementer or its agents, employees, affiliates, and Implementer’s Subcontractors, and all reasonable attorneys’ fees and costs related thereto.

EXCEPT AS SET FORTH BELOW, UNDER NO CIRCUMSTANCES WILL THE IMPLEMENTER, ADMINISTRATOR, THE CONTRACT ADMINISTRATOR OR THE COMMISSION BE LIABLE TO THE OTHERS FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS, LOSS OF OPPORTUNITY, ETC. Notwithstanding the foregoing, this exclusion shall not be applicable to the Implementer in the event of the negligence, willful misconduct, misappropriation of funds or other activity against which the Implementer indemnifies the Administrator, Contract Administrator and the Commission for the occurrence of an Incident or under breach of confidentiality or data security provisions set forth in this Agreement, by the Administrator or its officers, agents, employees, affiliates, Subcontractors and/or Implementers.

## 19. Insurance Requirements

Implementer shall provide and maintain in full force and effect at no cost to the Administrator, Contract Administrator and the Commission the following insurance coverage with limits as indicated, which may be revised by Administrator if required by state or federal law, at all times during the Term of Agreement:

- 19.1 Worker's Compensation and employer's liability insurance as required by law in the state in which Work is being performed. The employers' liability limits shall be one million dollars (\$1,000,000) each accident for bodily injury by accident, or one million dollars (\$1,000,000) each employee and policy for bodily injury by disease.
- 19.2 Commercial general liability (CGL) insurance or its equivalent satisfactory to the Administrator, Contract Administrator and the Commission and, if necessary, commercial umbrella or excess insurance with a total limit of \$1,000,000 each occurrence, with a \$2,000,000 annual aggregate as described below. If such CGL insurance contains a general aggregate limit, it shall apply separately to this Agreement.
  - CGL insurance shall be written on an occurrence form and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- 19.3 Automobile liability insurance and, if necessary, commercial umbrella or excess liability insurance with a combined single limit (or equivalent) of \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).
- 19.4 Professional liability insurance limit of two million dollars (\$2,000,000) per claim.
- 19.5 Crime and fidelity insurance limit of one million dollars (\$1,000,000) each occurrence.
- 19.6 Cybersecurity insurance limit of five million dollars (\$5,000,000) each claim.
- 19.7 Implementer waives the right of subrogation, and waives all rights against the Administrator, Contract Administrator and the Commission and its agents, officers, directors and employees for recovery of damages.
- 19.8 The Administrator, Contract Administrator and the Commission shall each be included as an additional insured using the current ISO endorsement or an equivalent form. This insurance shall apply as primary insurance regarding any other insurance or self-insurance programs afforded to the Administrator, Contract Administrator and the Commission. There shall be no endorsement or modification of the insurance to make it excess over other available insurance; alternatively, if the insurance states that it is excess or *pro rata*, the policy shall be endorsed to be primary regarding the additional insured.
- 19.9 All insurance shall be placed and maintained with insurers authorized to do business in the state in which Work is being performed and that have an A.M. Best rating of A -, VII or better, (or equivalent satisfactory to Administrator). Implementer will furnish copies of any insurance policies for the Administrator, Contract Administrator and the Commission's

review if requested. Those policies may be redacted to prevent the disclosure of Confidential Information.

- 19.10 Implementer shall furnish the Administrator with duly executed Certificates of Insurance certifying that such insurance has been provided and that Implementer will give Administrator thirty (30) days' prior written notice of any material change in, or cancellation of, such insurance coverage. Such certificate shall also specify the dates when such insurance commences and expires. Certificates should be provided to the Administrator via e-mail, uploaded to the Grid, or via U.S. Mail.
- 19.11 Implementer agrees that such insurance shall be maintained throughout the entire Term of Agreement. New certificates shall be provided within two (2) weeks of the renewal date of any expiring insurance coverage giving evidence of continuing coverage subject to Administrator's withholding of any payments due to Implementer until such certificates are received. The failure of the Administrator, Contract Administrator and the Commission to obtain evidence of such insurance from Implementer before permitting Work to commence or continue shall not be deemed to be a waiver by the Administrator, Contract Administrator and the Commission, and the Implementer shall remain under continuing obligation to maintain the insurance coverage.
- 19.12 Insurance policies of Implementer shall be on an occurrence basis, except that Professional Liability will be on a claims-made basis. If any insurance is written on a claims-made basis, Implementer shall maintain the coverage for a minimum of five (5) years after the termination of this Agreement. The Administrator, Contract Administrator and the Commission may require the Implementer to furnish copies of any claims-made policies and to institute measures to guarantee further coverage for claims as contemplated by this Agreement.
- 19.13 No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of Implementer for the Implementer's operations. These are solely minimum amounts and do not affect the rights of the Administrator, Contract Administrator and the Commission to further indemnification, nor do they limit the Implementer's liability.

## 20. Governing Law

This Agreement shall be governed, construed and enforced under the internal laws of the State of Wisconsin, without regard to any law of conflicts that may direct the application of the laws of another jurisdiction. Administrator and Implementer each hereby irrevocably submits itself to the original jurisdiction of the state and federal courts sitting in Madison, Wisconsin with regard to any controversy in any way relating to the execution, delivery or Performance of this Agreement. Suits, claims or actions founded upon such controversies shall be brought or filed exclusively in such courts. The exclusive venue for any dispute or controversy arising under this Agreement shall be the Dane County, Wisconsin Circuit Court or the Federal District Court for the Western District of Wisconsin.

## 21. Compliance with Applicable Laws

Implementer shall at all times comply with and observe all federal and Wisconsin state laws and published circulars, local laws, ordinances, rules and regulations that are in effect during the period of this Agreement and which in any manner affect the Work or Implementer's Performance of this Agreement. This Agreement has been executed and delivered in, and shall be construed and enforced, under the laws of the State of Wisconsin and the laws of the United States. All references to statutes or regulations contained in this Agreement shall be construed to include all successors and amendments thereto. If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the Term of Agreement, that provision shall be fully severable and this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, this Agreement shall be reformed to include as a part of this Agreement a provision as similar in terms to the illegal, invalid, or unenforceable provision as may be possible and still be legal, valid, or enforceable.

## 22. Independent Contractor

Implementer shall at all times perform the Work as an independent contractor and not as an employee, agent or partner of Administrator, or as a joint venture with Administrator. Nothing is intended nor shall be construed to create a partnership, employer-employee relationship, a joint venture, or an agency relationship between the Parties. Implementer shall be responsible for all payroll taxes levied or in any way attributable to Implementer. If the Internal Revenue Service or the Wisconsin Department of Revenue should question the independent contractor status of Implementer, the Parties mutually agree that Administrator has the right to participate in any discussion, negotiation, or resolution occurring with the Internal Revenue Service, U.S. Department of Labor, Wisconsin Department of Revenue or Wisconsin Department of Workforce Development, regardless of with whom the discussions or negotiations are initiated.

## 23. Taxes

Administrator shall have no liability whatsoever regarding any taxes that may be due on any and all amounts to be paid to Implementer. Implementer shall indemnify and hold Administrator harmless from such taxes. Implementer's obligations pursuant to this Article shall survive termination or expiration of this Agreement.

## 24. Funds Payable to Implementer

Notwithstanding any of its other provisions, this Agreement shall impose no liabilities or obligations on Contract Administrator or its members or affiliates to contribute any amounts or make any payments for Focus on Energy Programs that are in excess of the requirements currently set forth in Wis. Stat. §196.374(3)(b)(2) or as modified by law. Implementer acknowledges that it bears the risk of curtailment, suspension or reduction in Focus on Energy funding, and that it shall be responsible



for including the same provisions in its Agreements with third parties related to this Agreement. Any curtailment, suspension or reduction in the Work will not affect payment for Work performed prior to the notice of curtailment, suspension or reduction in the Work.

#### 25. Conflict of Interest

Implementer and its employees, and Implementer Subcontractors and their employees, may engage in business activities, other than those described directly below, as long as these activities do not create a conflict of interest with Performance of the Work. Implementer also affirms that it and its employees, and Implementer Subcontractors and their employees, shall promptly and fully inform the Administrator and the Commission of any business activities and/or relationships that any person, fully acquainted with the circumstances, could reasonably conclude might unfairly advantage Implementer and its employees, or the Implementer Subcontractor and their employees, and the Implementer agrees that it shall abide by the Commission's reasonable determination as to whether such activities or relationships fall within the terms of this Article. Implementer agrees, and will obligate its employees, and Implementer Subcontractors and their employees, to discontinue any activity that the Commission determines to constitute a conflict of interest.

Implementer affirms that neither it nor its employees, or Implementer Subcontractors or their employees, has or presently expects any beneficial, contractual or business relationship with the Contract Administrator, Administrator, Commission, Program Evaluator, Compliance Agent or Fiscal Agent that will be directly affected by Implementer's Performance of the Work. The Implementer further affirms that it, its employees, Implementer Subcontractors and their employees, shall not develop, pursue, or confirm any such beneficial, contractual, or business relationships with the above-mentioned Parties throughout the Term of Agreement, and for six (6) months thereafter, without the written permission of the Commission.

While conducting business on behalf of any organization other than the Focus on Energy Program, Implementer and Implementer Subcontractors shall ensure that their time, travel and any other costs are not billed to Focus on Energy.

#### 26. Non-Enforcement of Non-Compete Clauses

Implementer shall not enforce any non-compete clauses, contracts or Agreements with any employees or Implementer Subcontractors for any Focus on Energy work, including work performed by the Administrator, Subcontractors, Contract Administrator, Fiscal Agent, Compliance Agent or the Commission.

#### 27. Force Majeure

Either Party's performance of any part of the Agreement shall be excused to the extent that it is hindered, delayed or otherwise made impractical by reason of flood, riot, fire, explosion, war, acts or omissions of the other Party or any other cause, whether similar or dissimilar to those listed, beyond the Party's reasonable control, and not due to the Party's negligence. If any such event occurs, the non-performing Party shall make reasonable efforts to notify the other Party of the nature of such condition and the extent of the delay and shall make reasonable, good faith efforts to

resume Performance as soon as possible. If any such event continues for more than thirty (30) days, Administrator shall have the right to terminate this Agreement immediately.

#### 28. Fair Employment Practices and Americans with Disabilities Act

Implementer will comply with the requirements of Wisconsin and federal law relating to fair employment practices. To the full extent applicable, Implementer shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990 and any amendments thereto, that qualified individuals with disabilities receive equitable access to the services, Programs, and activities provided by Implementer under this Agreement.

#### 29. Implementer Subcontractors and Required Flow Downs

Implementer shall obtain the written consent of Administrator Compliance Manager prior to engaging an Implementer Subcontractor. Implementer shall include the following provisions in all contracts with Implementer Subcontractors:

- Article 5: Records Available for Audit and Inspection
- Article 6: Ownership of Data, Records and Intellectual Property; Confidential Information
- Article 7: Information Technology Systems
- Article 9: No Gifts or Gratuities
- Article 10: Use of the “Focus on Energy” Name
- Article 11: Focus on Energy Code of Conduct
- Article 13: Media Appearances
- Article 25: Conflict of Interest
- Implementer must orient new Subcontractors to the Program and obtain and retain executed Compliance Certification Forms from all Implementer Subcontractors as required by the *Policy Manual*, and the flow downs referenced above in this Article.
- Implementer Subcontractor shall not contract with any other Subcontractor for labor.
- Implementer Subcontractor shall be subject to a compliance audit if selected by the Commission.
- Implementer Subcontractor shall not incur any expenses prior to executing a contract with Implementer to the Administrator, unless the Commission gives written approval.
- Implementer Subcontractor will provide the Implementer with a list of staff authorized to charge to the Program, which will include billing rates, title, and function. This list will be maintained on The Grid and updated as approved changes occur.
- Implementer Subcontractor shall submit invoices with charges allocated to Budget Cost Categories per the requirements of the Policy Manual. The Implementer Subcontractor shall provide supporting invoice details that includes the name of the employee, number of hours

worked, and the expense amount. Implementer shall be fully liable for any invoicing errors by Implementer Subcontractor.

- The Implementer Subcontractor's invoices must be received within 60 days of the time period they are for. Any submitted past the deadline will only be paid with approval from the Commission.
- Implementer Subcontractor shall cooperate with the Program Evaluator, Fiscal Agent and Compliance Agent. This includes prompt responses to questions and requests for information.
- Implementer Subcontractor shall utilize SPECTRUM for all activity related to Focus on Energy.
- If the Implementer Subcontractor contract is not extended or renewed, prior to its expiration, Implementer Subcontractor shall provide a list of all equipment and unused materials purchased using Focus on Energy funds, including the date of purchase and the purchase price of the item. Title to equipment or unused materials purchased with Focus on Energy funds shall vest in SEERA's name unless otherwise provided in the Agreement with the Program Subcontractor. Disposition of any equipment or unused materials shall be under applicable state and federal property disposal procedures, unless otherwise provided in the Agreement with the Program Subcontractor.
- SEERA has full recovery rights to all direct cost purchases by Implementer Subcontractors. The direct cost purchases shall be transferred to the contracting agency's custody within 45 days of the contract terminating.
- If SEERA chooses not to recover residual inventory, such as unused supplies or other expendable property, the Implementer Subcontractor may retain or sell the unused product, upon direction of SEERA, and shall compensate SEERA for its share. The amount of compensation shall be computed in the same manner as if the inventory was purchased based on current market value.
- No software license purchase or IT systems development may occur by the Implementer Subcontractor using Focus on Energy funds without a waiver being obtained from the Administrator.

### 30. Labeling Future New Attachments

The Parties may agree in writing to additional attachments. If the Parties agree to multiple attachments, they will be labeled in sequential order. If there are multiple scopes of work, they will

be labeled in sequential order as Attachment B, Attachment B-2, Attachment B-3, etc. Each Attachment shall refer to the General Terms and Conditions of the Agreement.

### 31. Order of Precedence

Any conflicts between the Agreement provisions shall be governed by the following precedence:

- Main Contract Terms and Contract Exceptions (These terms prevail over other terms contained in the General Terms and Conditions.)
- Attachment A: General Terms and Conditions
- Attachment B: Scope of Work
- Attachment C: Labor Rate Table
- Policy Manual, as amended or updated, incorporated by reference
- Operational Procedures Guide, as amended or updated, incorporated by reference.

### 32. Entire Agreement

This Agreement, with the following Attachments, represents the entire Agreement between the Parties relating to the subject hereof. This Agreement constitutes an Agreement between commercial Parties that has been reviewed by counsel of each Party. All prior or contemporaneous agreements, representations, statements, negotiations, and understandings, whether written or verbal, are hereby superseded and shall have no effect unless merged herein. This Agreement consists of the following documents:

- Main Contract Terms and Contract Exceptions (These terms prevail over other terms contained in the General Terms and Conditions).
- Attachment A: General Terms and Conditions
- Attachment B: Scope of Work
- Attachment C: Labor Rate Table
- Policy Manual, which may change from time to time, incorporated by reference
- Operational Procedures *Guide*, as amended or updated, incorporated by reference.

### 33. Article and Other Headings

This Article and all other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

### 34. Counterparts/Electronic Signature

This Agreement may be executed electronically or in one or more counterparts, with signatures delivered by emailed PDF documents (whether emailed directly or through a commercial document signing program), all which counterparts when taken together shall comprise one instrument.

### 35. Termination of Agreement

Administrator may terminate this Agreement upon thirty (30) calendar days' written notice to Implementer. Termination may be for cause or without cause. If of a termination without cause, Implementer will be paid for all approved work up to the date of termination.