

*State of New Hampshire Public Utilities Commission*



**Evaluation, Monitoring, and Verification Consultant**

**REQUEST FOR PROPOSALS (RFP)**

**RFP #2020-005**

**Release Date: September 4, 2020**

**Application Due: 4:30 p.m. EST October 22, 2020**

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## Executive Summary

The New Hampshire Public Utilities Commission (Commission) is seeking proposals from qualified firms to provide advice on Evaluation, Monitoring, and Verification (EM&V) issues including, but not limited to, scope, methods, scheduling, how EM&V results inform program improvement, ISO-NE's forward capacity market evaluation requirements, and standardization of EM&V recording and reporting, as detailed in the April 2016 [Settlement Agreement](#) approved by Commission [Order No. 25,932](#)<sup>1</sup> and agreed to continue in the December 2019 [Settlement Agreement](#) approved by the Commission in [Order No. 26,323](#).<sup>2</sup> Total funding available under this request for proposals (RFP) derives from revenues associated with the electric distribution utilities' System Benefit Charge (SBC) and the natural gas distribution utilities' Local Distribution Adjustment Charge (LDAC). The Commission anticipates that an amount not to exceed \$95,000 annually will be available for services procured through this RFP over three years (total \$285,000), starting in January 2021, contingent upon availability of funding pursuant to RSA 374-F:3, VI., RSA 125-O:23, and other funding sources as approved by the Commission. The contract will be for three years, with a term ending on December 31, 2023.

### Pertinent Dates and Information

1. Electronic proposals must be received by the Commission no later than 4:30 p.m. on October 22, 2020. The electronic copy must be in PDF (portable document file) format.
2. Proposals should be submitted to:

Juli Pelletier, Business Administrator  
New Hampshire Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord, NH 03301-2429  
[PUC-RFP@nh.gov](mailto:PUC-RFP@nh.gov)

3. In addition to the electronic submission, prospective bidders must submit five (5) additional paper copies to the address above, which must be postmarked no later than October 22, 2020.
4. Prospective consultants may submit written inquiries about this RFP by e-mail to [PUC-RFP@nh.gov](mailto:PUC-RFP@nh.gov) no later than 4:30 p.m. EST on September 21, 2020. Inquiries and responses will be posted on the Commission's website at: [www.puc.nh.gov/home/requestforproposal.htm](http://www.puc.nh.gov/home/requestforproposal.htm). The subject line of the e-mail must state

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<sup>1</sup> See Order No. 25,932: [http://www.puc.nh.gov/Regulatory/Docketbk/2015/15-137/ORDERS/15-137\\_2016-08-02\\_ORDER\\_25932.PDF](http://www.puc.nh.gov/Regulatory/Docketbk/2015/15-137/ORDERS/15-137_2016-08-02_ORDER_25932.PDF).

<sup>2</sup> See 2019 Settlement Agreement ([https://www.puc.nh.gov/Regulatory/Docketbk/2017/17-136/LETTERS-MEMOS-TARIFFS/17-136\\_2019-12-12\\_EVERSOURCE\\_SETTLEMENT\\_AGREEMENT.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2017/17-136/LETTERS-MEMOS-TARIFFS/17-136_2019-12-12_EVERSOURCE_SETTLEMENT_AGREEMENT.PDF)) and Order No. 26,232 ([https://www.puc.nh.gov/Regulatory/Docketbk/2017/17-136/ORDERS/17-136\\_2019-12-31\\_ORDER\\_26323.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2017/17-136/ORDERS/17-136_2019-12-31_ORDER_26323.PDF)).

the following: RFP #2020-005, EM&V Oversight Consultant for Energy Efficiency Resource Standard.

5. Schedule of Events

<b>Event</b>	<b>Date/Deadline</b>	<b>Time</b>
RFP Issued	9/4/2020	4:30 PM
Question Period Closes	9/21/2020	4:30 PM
Responses to Questions Posted	9/25/2020	4:30 PM
Proposal Due Date and Time	10/22/2020	4:30 PM
Anticipated Contract Start Date	1/1/2021	

6. Follow-up conferences/interviews will be scheduled as needed, at the sole discretion of the Commission, provided that no proposer with a preliminary score of 70 or less will be interviewed.
7. An Evaluation Team consisting of Commission staff and other qualified personnel requested by the Commission (if any) will be established to evaluate responses (Proposals) to this RFP submitted by prospective consultants (proposers).

**I. BACKGROUND**

In June 2002, the New Hampshire electric utilities jointly developed and implemented a set of “core” energy efficiency programs (Core programs) that use the same eligibility requirements, and design, among other things, to ensure consistency among the utilities. The electric utilities include Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities, New Hampshire Electric Cooperative, Inc. (NHEC), Public Service Company of New Hampshire d/b/a Eversource Energy, and Until Energy Systems, Inc. In December 2002, the two natural gas utilities (i.e., EnergyNorth Natural Gas, Inc. d/b/a Liberty Utilities and Northern Utilities, Inc.) developed and implemented a set of energy efficiency programs. The electric utilities and natural gas utilities are collectively referred to herein as the Utilities. The Commission Staff and the Utilities work collaboratively to prioritize the Monitoring and Evaluation (M&E) needs of New Hampshire. One of those areas identified as a priority was to establish a multi-year evaluation plan that addresses the needs of New Hampshire as well as the measurement and verification requirements of the ISO-NE Forward Capacity Market.

On November 1, 2000, the Commission issued Order No. 23,574 in DR 96-150: Order Establishing Guidelines for Post-Competition Energy Efficiency Programs. That Order directed the NH utilities to implement a “thoughtful and thorough monitoring and evaluation program, noting that “an assessment of energy efficiency programs and measures should analyze the effects of the programs and measures on removing and reducing market barriers or transforming the market for those products. Impact and process evaluations are important, as well.”

On December 31, 2002, the Commission issued Order No. 24,109 in DG 02-106. This order approved energy efficiency programs for EnergyNorth and Northern Utilities.

In Order No. 24,599, issued on March 17, 2006, the Commission approved an agreement for Commission Staff to take direct responsibility for the monitoring and evaluation of the Core energy efficiency programs on a collaborative basis with utilities and other interested parties. As a result, Commission Staff had primary responsibility for overseeing M&E of the Core programs, until development of the Energy Efficiency Resource Standard (EERS) and the EM&V Working Group.

As part of the evaluation of Core electric and natural gas energy efficiency programs, over the course of 2008, the Commission and Utilities engaged a consultant, GDS Associates Inc., to undertake a major energy efficiency potential study. Among other things, that study analyzed current saturation rates of energy-using equipment and penetrations of energy efficiency equipment and practices in each end-use category, evaluated the extent to which past and current energy efficiency programs have achieved energy savings to date, including various sensitivity analyses, and recommended modifications to program and measure offerings that could increase the likelihood of achieving the identified potential. This report can be found at:

[www.puc.nh.gov/Electric/GDS%20Report/GDS%20Final%20Report.htm](http://www.puc.nh.gov/Electric/GDS%20Report/GDS%20Final%20Report.htm).

On February 1, 2013, the Commission issued Order No. 25,462 requiring the continuation of quarterly reports. These reports can be found at:

<http://www.puc.nh.gov/Electric/coreenergyefficiencyprograms.htm>

Traditional process, impact evaluation, and market assessment activities represent approximately five percent of the overall Core program budget.

The Commission and the Utilities are partners in the Northeast Energy Efficiency Partnerships' (NEEP) activities including the Regional EM&V Forum. The natural gas utilities explore opportunities to decrease the cost of planned evaluation efforts by performing research in collaboration with industry partners such as NEEP and GasNetworks™.

In 2016, the Commission established an EERS for New Hampshire Utilities. The Commission has long required the utilities to help their customers save money by using less electricity and gas. The State's 10-year energy strategy, developed under RSA 4-E:1 and crafted with the input of consumer groups, environmental advocacy organizations, utilities, and others, also calls for maximizing cost-effective energy efficiency investments. The Core energy efficiency programs and the EERS have given the utilities 18 years of experience with developing and implementing cost-effective programs.

As part of establishing EERS, the Commission approved a Settlement Agreement incorporating EM&V activities. Rigorous and transparent EM&V is essential to a successful EERS, to ensure that the energy efficiency programs actually achieve planned savings in a cost-effective manner. The Settlement Agreement envisions that the consultant(s) will share information and provide advice to other stakeholders, including the EERE Board, and this collaboration will enhance the development of EM&V framework for EERS programs going forward. Further, the

development and continuing updating of a Technical Resource Manual, as proposed by the Settlement Agreement, will enhance EM&V transparency, consistency and accuracy.

Budgets for EM&V activities are approved by the Commission in the context of the EERS filings, approved in December.

Following the submission by utilities of their 2018-2020 Energy Efficiency Plan ([Three Year Plan](#)) on September 1, 2017, and the review of that plan by Staff and the Parties, a Settlement Agreement was filed by the parties which called for the approval of the Three Year Plan with some modifications. The agreement incorporated the Three Year Plan's EM&V recommendations, which included establishment of an EM&V Working Group to manage and oversee evaluations, and the development of a Strategic Evaluation Plan based on a Six Year Evaluation Plan prepared for the Commission in 2014.<sup>3</sup> The Commission held a hearing on the Settlement Agreement on December 13, 2017, and the Commission approved the Settlement Agreement by Order [26,095](#) issued on January 2, 2018.

In the December 2019 [Settlement Agreement](#) approved by the Commission in [Order No. 26,323](#), parties agreed that the EM&V consultant was valuable and that the Commission would solicit similar assistance beyond 2020 during the next three-year plan.

## II. SCOPE OF SERVICES AND DELIVERABLES

The December 2019 Settlement Agreement approved the continuation of consultant assistance as provided for in the April 2016 Settlement Agreement. The consultant(s) will be engaged by, and report to, the Commission to assist Commission Staff, the Utilities, and the Settling Parties, the EESE Board or successor, and others determined by the Commission who will be participating in EM&V activities.

The general scope and purpose of services to be provided by the consultant(s) are as follows:

1. The consultant will work closely with the EM&V Working Group in developing and confirming a clear and coherent set of recommended EM&V studies for the 2021-2023 period;
2. The consultant will provide recommendations that would provide greater transparency in the overall planning and conduct of the EM&V studies;
3. The consultant will provide recommendations about EM&V issues that may become more relevant with changes in energy efficiency program budgets, program design, strategic direction, or policy guidance;
4. The consultant will work with the EM&V Working Group to continue to modify and update the Technical Resource Manual;

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<sup>3</sup> New Hampshire 2018-2020 Statewide Energy Efficiency Plan. Page 157-172. (September 2017) Available at: [http://puc.nh.gov/Regulatory/Docketbk/2017/17-136/INITIAL%20FILING%20-%20PETITION/17-136\\_2017-09-01\\_NHUTILITIES\\_EE\\_PLAN.PDF](http://puc.nh.gov/Regulatory/Docketbk/2017/17-136/INITIAL%20FILING%20-%20PETITION/17-136_2017-09-01_NHUTILITIES_EE_PLAN.PDF).

5. The consultant will provide support and advice to the Commission Staff in EM&V, planning, and policies based on its experience with EM&V in New Hampshire and other states.

Specific tasks for the consultant will include the following:

- (a) Building a consensus around a series of EM&V Working Group priorities;
- (b) Providing guidance in finalizing the Strategic Evaluation Plan, including the definition of a systematic evaluation planning and implementation process, and the associated budget allocations;
- (c) Providing guidance on the implementation of several standard approaches for determining energy and demand savings (as well as other non-energy impacts);
- (d) Determining when impact evaluations should be accompanied by process evaluations, market effects evaluations, and market characterization studies;
- (e) Recommending when New Hampshire should participate in evaluation studies initiated in other jurisdictions in the region;
- (f) Facilitating agreement on a clear and coherent set of recommended EM&V studies for the 2021-2023 period accompanied by an agreed timetable;
- (g) Providing advice on all key terms/definitions related to energy efficiency evaluation, and how to effectively benchmark appropriate metrics;
- (h) Offering guidance on key evaluation issues and review approval of proposed EM&V methodologies;
- (i) Informing the EM&V Working Group concerning publicly available energy efficiency evaluation resources;
- (j) Overseeing the continuing modification and updating of a statewide Technical Resource Manual;
- (k) Ensuring compliance with ISO-NE's forward capacity market evaluation requirements;
- (l) Providing guidance to Commission Staff in the development of the regional Avoided Energy Supply Cost Study;
- (m) Providing guidance to ensure adequate utility program database consistency and utility program database documentation;
- (n) Keeping abreast of emerging issues associated with EM&V activities, including EM&V 2.0 developments;
- (o) Enhancing Commission Staff EM&V capabilities;
- (p) Enhancing EESE Board understanding of EM&V processes and their value;
- (q) Identifying and tracking of key energy efficiency driven market indicators;
- (r) Supporting the investigation and development of a consensus on issues related to EM&V studies, study results, and application of results in planning and reporting;
- (s) Providing recommendations on the selection and hiring of independent third-party evaluators/vendors, as requested
- (t) Providing recommendations on the review of work products of independent third-party evaluators/vendors as requested;
- (u) Monitoring contract management and providing recommendations, including the possibility of overseeing contract management, to ensure that studies stay on

schedule and within budgetary limits; and alert Commission Staff and the EM&V working group as needed.

- (v) Providing input into planning process and policy based on EM&V and other experience in other states;
- (w) Providing input and recommendation on other studies conducted related to the EERS plan (e.g., Avoided Energy Supply Cost Study, Non-Energy Impact Study, Energy Optimization, etc.);
- (x) Providing advice and support, including possible testimony before the Commission, regarding EM&V and related policies on behalf of Commission Staff.

The consultant will submit an annual report on the progress of EM&V activities by February 1, 2022 and February 1, 2023, or other mutually agreeable dates, and a final such report due by December 15, 2023. The work of the consultant will be subject to an annual evaluation of progress achieved against the above-mentioned scope and tasks to take place during the month of October of each program year.

### **III. CONFIDENTIALITY**

Each proposer also agrees to maintain as confidential all information received from the Commission in the course of this RFP and contracting process until such time as it is instructed otherwise by the Commission. . A Proposal must remain confidential until the effective date of any contract resulting from this RFP. A Proposer's disclosure or distribution of Proposals other than as permitted by the Commission will be grounds for disqualification.

### **IV. COMPONENTS OF THE PROPOSAL**

The following is a list of the information to be provided in the Proposal. Proposers should respond to all areas listed below, in the order listed, and conclude with a separate section on cost.

1. Letter of Transmittal: Include name of Proposer, contact information for, and signature of, proposed consultant. (1 page)
2. Corporate/Company Information: Information concerning its corporate/company history; i.e., how many years in business, corporate officers or company principals, location of branch offices, professional and business association memberships, current or prior engagements involving substantive areas similar to those described in this RFP, the parties it represented in such engagements, the scope of work it performed in such engagements, and the conclusion and recommendations it made publicly in connection with such engagements. (1 page)
3. Proposed Scope of Work and Schedule: Describe the essential elements of the proposed services consistent with Section II., Scope of Service and Deliverables, including a description of the EM&V goals and milestones to be achieved during a three-year program. (no more than 3 pages)



4. Relevant Qualifications and Experience of Personnel Assigned: Detailed description of the Proposer's relevant experience with respect to the proposed scope of services, including a list of all personnel who will be assigned to this engagement, including the project manager (if applicable), and detailed resumes (in an appendix) and summaries of each individual reflecting their relevant experience and the nature of their specific responsibilities. During the course of the work, the Commission must approve in writing any substitutions or changes in personnel assigned to perform the work. (no more than 3 pages, not including the resumes of the key personnel)
5. References: A list of up to three references for work performed which is similar in scope or content to that proposed, preferably within the past 3 years. (1 page)
6. Statement of Disclosure: Identification and description of any existing or potential conflicts of interest, including those that arise as a result of relationships or affiliations with utility companies under the jurisdiction of the Commission, other industry participants, trade associations, or advocacy organizations or groups that participate in or represent active stakeholders in the commercial and industrial solar equipment manufacturing, sales, or installation industries.
7. Detailed Program Budget: Provide detailed annual program budgets for a three-year period, including details on key personnel including position, rates, and hours. (up to 3 pages)

## **V. SELECTION PROCESS AND SCORING CRITERIA**

Overall cost is a consideration but may not be the determining factor in the Commission's decision. In addition to cost, the Commission will consider the following criteria:

- a. Knowledge and practical experience that the organization possesses, including that of the staff and any subcontractors assigned to the engagement.
- b. Experience and qualifications in providing similar services in New Hampshire as well as other states and to other utility commissions or regulatory agencies.
- c. Availability and accessibility of staff assigned to the engagement, including physical proximity to New Hampshire.
- d. Ability to perform all of the major disciplines necessary to perform the work.
- e. Cost of consulting services and expenses, including the competitiveness of the proposed hourly rates and any proposed discounts or other cost-effective benefits.

(The Commission reserves the right to negotiate lower fees or a different fee structure than proposed, with any selected firms).

- f. The experience, commitment and role of the firm's proposed manager in charge of providing quality services to the Commission.
- g. Overall responsiveness to the requirements of the RFP, including completeness, clarity and quality of the proposal.
- h. Interviews, if performed.

A. Selection Process

Proposals will be reviewed and evaluated in a three-tier review process, followed by a contracting phase. The four steps are summarized below:

Step 1: Staff shall assess completeness and responsiveness of proposals to eliminate non-conforming proposals. Staff may waive or offer a limited opportunity to cure immaterial deviations from RFP requirements if it is determined to be in the best interests of the State.

Step 2: An Evaluation Team consisting of Staff members shall preliminarily score conforming proposals and conduct interviews, if requested, as described below. The Evaluation Team shall score all proposals using pre-published scoring criteria set forth in this RFP and develop a score for each proposal from 0-100 points.

Step 3: Based on the proposals, the scores developed by the Evaluation Team at Step 2, and following interviews and/or written questions, if applicable, and review of references, the Evaluation Team shall generate final consensus scores for each proposal, rank all proposals, and submit its recommendation to the Commissioners. Selection is subject to review and approval by the Commission.

Step 4: The Commission shall negotiate, if necessary, and develop a contract and related documents consistent with the RFP, then submit the completed contract(s) to Governor and Executive Council for approval.

Notwithstanding any other provision of this RFP, this RFP does not commit the Commission to make an award of a contract. The Commission reserves the right, at its sole discretion, to reject any or all proposals, or any portions thereof, for any reason, at any time, including, but not limited to, canceling the RFP, and to solicit new proposals under a new acquisition process. If, for any reason, negotiations with the top scorer(s) do not result in a contract(s), the Commission may go to the next highest scorer(s) and seek to negotiate with that proposer(s).

Proposals shall be deemed incomplete and ineligible if information that is essential to the scoring evaluation is not included in the proposal. Proposals that fail to meet the following application requirements will be deemed ineligible:

- Filing of a timely proposal, with the correct number of paper and electronic copies, and all mandatory elements;
- Identification of key personnel, and potential contractors or subcontractors, if applicable, or a detailed process and timeline to identify and engage any such contractors or subcontractors;
- Inclusion of a detailed budget plan and cost information.

All proposals deemed ineligible shall receive notification of this determination.

Broadly, the Commission will evaluate all proposals received and deemed eligible based upon completeness, clarity, quality of the proposal, how well the proposal meets the approved Scope and Timeline requirements, reasonableness of cost, the qualifications and relevant experience of the consulting team, and the likelihood of the consulting completion within the contract period. All proposals deemed eligible for consideration will be evaluated based upon the specific criteria identified.

If determined to be appropriate by the Commission, proposers may be invited to oral interviews. The Commission retains the sole discretion to determine whether to conduct oral interviews, with which proposers, and the number of interviews. Proposers are advised that interviews may be conducted with fewer than all proposers. No proposer with a preliminary score of 70 or less will be interviewed.

The purpose of oral interviews is to clarify and expound upon information provided in the written proposals. Proposers are prohibited from altering the basic substance of their proposal during the oral interviews. Proposers may be asked to provide written clarifications of elements in their proposals, regardless of whether an oral interview will be conducted.

Information gained from oral interviews will be used to refine scores assigned after the Step 2 review of the Proposal.

#### B. Scoring Criteria

The Commission shall consider all of the following criteria, and assign a corresponding point score, where a maximum score for all criteria shall be 100 points. Cost is a consideration, but may not be the determining factor in the selection of the consultant. The Commission reserves the right not to consider any proposal with a total aggregate point score of less than 65 points.

1. Qualifications, technical expertise, certifications, knowledge and practical experience that the organization or individual possesses, including that of the staff and any subcontractors assigned to the engagement, providing services directly relevant to the specified scope of services. (Maximum Point Score: 25)

2. General experience and qualifications in providing similar services in New Hampshire as well as other states and to other utility commissions or regulatory agencies, including similar current or prior engagements. (Maximum Point Score: 25)
3. Cost of consulting services and expenses, including the competitiveness of the proposed fees and/or hourly rates and any proposed discounts or other benefits. (The Commission reserves the right to negotiate lower fees or a different hourly rate structure than proposed, with any selected firm(s) or individuals.) (Maximum Point Score: 20)
4. Ability to work effectively in New Hampshire, including accessibility and proximity to, and familiarity with New Hampshire. (Maximum Point Score: 20)
5. Overall responsiveness to the requirements of the RFP, including completeness, clarity, and quality of Proposal, including proposed allocation of resources and time to critical tasks, proposed scope of work and schedule. (Maximum Point Score: 10)

## **VI. TERM OF CONTRACT**

The term of the contract is expected to be for a period of three years from January 1, 2021 through December 31, 2023. The contract term may be extended by an additional term at the sole option of the State, , contingent upon satisfactory vendor performance, continued funding, , and, Governor and Executive Council approval.

## **VII. GENERAL CONDITIONS**

1. The Commission reserves the right to reject any or all proposals, or any part thereof, to determine what constitutes a conforming proposal, to waive irregularities that it considers non-material to the proposal, solely as it deems to be in the best interests of the State, and to negotiate with any party in any manner deemed necessary to best serve the interests of the State. This RFP and all information relating to this RFP (including, but not limited to, fees, contracts, agreements, and prices), are subject to the laws of the State of New Hampshire regarding public information and state procurement of goods and services.
2. If the Commission decides to award a contract as a result of this RFP process, any award is contingent upon approval of the contract by the Commission agency head and, if applicable, the Governor and Executive Council with payment subject to the Commission's special utility assessment process. Payments hereunder are contingent upon the availability of funds assessed pursuant to RSA 365:37, II. The Commission shall assess the costs of the contract to the appropriate party(ies) and upon payment of the assessment, will process payment

to the consultant. General funds will not be requested to support the contract resulting from this RFP.

3. The Commission reserves the right to request additional information from any or all consultants submitting proposals to assist in the evaluation process.
4. Confidentiality of Proposal and Information Provided to Proposers:

The substance of a proposal must remain confidential until the effective date of any contract resulting from this RFP. A proposer's disclosure or distribution of proposals other than to the Commission may be grounds for disqualification. Each proposer also agrees to maintain as confidential all information to which it has access in the course of this RFP and contracting process until such time as it is instructed otherwise by the Commission.

5. Public Disclosure:

Pursuant to RSA 21-G:37, all responses to this RFP shall be considered confidential until the award of a contract. At the time of receipt of proposals, the Commission will post the number of responses received with no further information. No later than five (5) business days prior to submission of a contract to the Department of Administrative Services pursuant to this RFP, the Commission will post the name of each proposer, and rank or score of each proposal eligible to be scored. In the event that the contract does not require Governor and Executive Council approval, the Commission shall disclose the name of each proposer and rank or score of each proposal eligible to be scored at least five (5) business days before final approval of the contract. All such postings may be viewed on the Commission's website at: [www.puc.nh.gov/Home/requestforproposal.htm](http://www.puc.nh.gov/Home/requestforproposal.htm).

By submitting a proposal, the proposer acknowledges that the Commission is subject to the Right-to-Know Law, RSA Chapter 91-A. The content of each proposer's proposal shall become public information upon the award of any resulting contract. Any information submitted as part of a response to this RFP may be subject to public disclosure unless otherwise exempt. *See* RSA 91-A. In addition, in accordance with RSA 9-F:1, any contract entered into as a result of this RFP may be made accessible to the public online through the website Transparent NH: (<http://www.nh.gov/transparentnh/>). However, business financial information, confidential information, such as personally identifiable information, including, but not limited to, social security numbers, taxpayer identification numbers, employer identification numbers, and account numbers, proprietary information such as trade secrets, financial models and forecasts, and proprietary formulas, may be exempt from public disclosure under RSA 91-A:5, IV.

If any part of its proposal contains information that a proposer asserts is exempt from public disclosure, **the proposer must specifically identify all relevant text**

**in a letter to the Commission, and must mark or stamp each page of the materials claimed to be exempt from disclosure as “confidential,”** and provide support for such assertion(s) as part of proposer’s response to this RFP. The proposer shall explain, in writing, what measures it has taken to keep such information confidential, and the personal privacy or competitive business interests that would be harmed if such information were to be publically disclosed. The explanation shall also identify by page number and proposal section number the specific information the proposer claims to be exempt from public disclosure pursuant to RSA 91-A:5. It is helpful if the text claimed to be confidential is also highlighted, underlined, or otherwise identified in the actual proposal itself. Marking the entire proposal or entire sections of the proposal (e.g., costs) as “confidential” will neither be accepted nor honored.

The Commission shall maintain the confidentiality of information contained in proposals, insofar as doing so is consistent with RSA Chapter 91-A. Any information a proposer identifies as exempt from disclosure shall be kept confidential until the Commission has determined, as necessary, whether such information is exempt from public disclosure pursuant to RSA 91-A.

In the event that the Commission receives a request to view portions of a proposal that the proposer has properly and clearly marked “confidential,” the Commission shall notify the proposer and specify the date the Commission intends to release the requested information, redacting any information the Commission independently concludes is exempt, consistent with applicable laws and regulations. Any effort to prohibit or enjoin the release of the information the Commission identifies for release shall be the proposer’s responsibility at the proposer’s sole expense. If the proposer fails to obtain a court order enjoining the disclosure, the Commission may release the information on the date the Commission specified in its notice to the proposer(s), or in its notice to any other relevant parties, without any liability to the proposer(s).

6. By submitting a proposal, a proposer agrees that in no event shall the Commission be either responsible for or held liable for any costs incurred by the proposer in preparation of or in connection with the proposal, or for work performed prior to the effective date of any resulting contract.
7. All parties submitting proposals shall be Equal Opportunity Employers. The selected consultant will be expected to comply with all federal, state, and local laws respecting non-discrimination in employment.
8. The Commission reserves the right to amend or cancel this RFP at any time. Proposers should check <https://www.puc.nh.gov/Home/requestforproposal.htm> for any addenda to this RFP before submitting their proposals, and for answers to any questions other parties may have submitted.

9. The selected consultant shall be required to submit a Taxpayer Identification Number (TIN), Employer Identification Number (EIN), or Social Security Number (SSN), and to register as a vendor with the State of New Hampshire.
10. The terms and conditions set forth in the State’s Form P-37 (version 12/11/2019) “Agreement, General Provisions” (General Provisions) for contracts, attached hereto as Appendix B, shall apply to the contract to be entered into with the winning proposer(s). In addition, each contract shall be supplemented by three exhibits: Exhibit A will include any special provisions, including any modifications to the General Provisions regarding insurance coverage and other matters; Exhibit B will set forth in detail the Scope of Services and reporting requirements; and Exhibit C will set forth in detail the price limitation, the source of payment (special utility assessment), and any preconditions to payment.
11. Once a contract becomes effective, any subsequent material changes or modifications to the contract terms must be submitted for review and prior approval by the Chairwoman and, if applicable, the Governor and Executive Council.
12. This RFP is not an offer. Neither the Commission nor this RFP shall create any commitment on the part of the State or confer any rights on the part of the proposer unless and until a binding written contract is executed between the Commission and the proposer, and if applicable, approved by the Governor and Executive Council.
13. Property of the State: All materials and data submitted or received in response to this RFP will become the property of the State and will not be returned to the proposer(s). Upon contract award, the State reserves the right to use any information presented in any proposal, provided that its use does not violate any copyrights, or other provisions of law, including RSA 91-A.
14. Non-Collusion: The proposer’s signature on a proposal submitted in response to this RFP guarantees that the prices, terms and conditions, and work quoted have been established without collusion with other proposers and without effort to preclude the Commission from obtaining the best possible competitive proposal. Proposers who wish to submit joint proposals with other consultants must clearly identify that the proposal is a “joint proposal” and must identify all proposers in the first instance.
15. Challenges on Form or Process of the RFP

Any challenge regarding the validity or legality of the form and procedures of this RFP, including, but not limited to, the evaluation and scoring of proposals, shall be brought to the attention of the Commission at least ten (10) business days prior to the proposal submission deadline, by sending written notice to the RFP Point of Contact, Ms. Juli Pelletier, the Commission’s Business Office Director. By

submitting a proposal, the proposer is deemed to have waived any challenges to the Commission's authority to conduct this procurement and the form and procedures of this RFP.

### **VIII. GENERAL PROVISIONS, FORM P-37 (version 12/11/2019), AND CERTIFICATES**

The successful proposer(s) will be expected to enter into a contract with the State of New Hampshire. The terms and conditions set forth in Form P-37 (version 12/11/2019) General Provisions (available at: <http://www.puc.nh.gov/Home/requestforproposal.htm>) are mandatory and will apply to any contract awarded to the proposer. In addition, project specific terms and conditions will be negotiated with the proposer and included in the final contract. For the convenience of the proposers, Form P-37 (version 12/11/2019) has been included in Appendix A.

When responding to this RFP, each proposer must explicitly indicate that the proposer shall comply with the requirements of Form P-37 (version 12/11/19). To the extent a proposer believes that an exception to the standard form will be necessary for the proposer to enter into a contract, the proposer should raise that issue during the proposer inquiry period. Staff will review the inquiry regarding the requested exception(s) and respond that the exception is accepted, rejected, or note that the Commission is open to negotiation regarding the requested exception(s) at the Commission's sole discretion. If a proposer's exception is accepted, or is open to negotiation, the Commission will, by means of posting the answer to the proposer's inquiry, and prior to the conclusion of the inquiry response period, provide notice to all potential proposers of the exception(s) which has been accepted, or is open to negotiation, and indicate that exception is available to all potential proposers. Any exceptions to the standard form contract that are not raised during the proposer inquiry period are waived. In no event is a proposer to submit its own standard contract terms and conditions as a replacement for the State's terms in response to this RFP. The proposer inquiry period begins when the RFP is posted, and ends at the conclusion of the RFP's written inquiry period. All inquiries must be in writing, and must be sent to the RFP point of contact identified above.

With regard to Form P-37 (12/11/2019) General Provisions, Paragraph 14, "Insurance," please note that proposers may be allowed to substitute professional liability insurance for part or all of the per occurrence comprehensive general liability insurance coverage. In addition, excess liability insurance in an equal amount may be substituted for up to \$1,000,000 of the per occurrence comprehensive general liability or professional liability insurance coverage. The State reserves the right to consider further waiving or modifying the insurance requirements in Paragraph 14 based on inquiries and proposals submitted, consistent with the procedure described above.

**A proposer will be required to fill in the P-37 Form (version 12/11/2019) ONLY upon the Commission's selection of the winning proposal(s), and prior to submission of the final contract(s) for review and approval by the Chairwoman and, if applicable, the Governor and Executive Council.**



The successful proposer(s) will be required to provide the following certificates prior to entering into a contract with the Commission:

Secretary of State’s Office Certificate of Good Standing (“CGS”)	Business organizations and businesses using trade names need a CGS, except for nonresident nonprofit corporations. Individuals contracting in their own names do not need a CGS.
Certificate of Vote/ Authority (“CVA”)	Business entities and businesses using trade names need a CVA. Individuals contracting in their own name do not need a CVA.
Certificate of Insurance	Certificate of Insurance form attached with insurance coverages required under the contract. Modifications of insurance coverage required will be specified in the contract.
Workers’ Compensation	Contractor must demonstrate compliance with or exemption from RSA 281-A (and if applicable, RSA 228:4-b and RSA 21-I:80, and any other applicable laws or rules).

The successful proposer(s) will be required to provide the above certificates ONLY upon the Commission’s selection of the **winning proposal(s), and prior to submission of the final contract(s) for review and approval by the Chairwoman and, if applicable, the Governor and Executive Council.**

## IX. ETHICAL REQUIREMENTS

From the time this RFP is published until a contract is awarded, no proposer shall offer or give, directly or indirectly, any gift, expense reimbursement, or honorarium, as defined in RSA 15-B, to any elected official, public official, public employee, constitutional official, or family member of any such official or employee who will or has selected, evaluated, or awarded an RFP, or similar submission. Any proposer that violates RSA 21-G: 38 shall be subject to prosecution for an offense under RSA 640:2. Any proposer who has been convicted of an offense based on conduct in violation of this section, which has not been annulled, or who is subject to a pending criminal charge for such an offense, shall be disqualified from bidding on this RFP, or similar request for submission and every such proposer shall be disqualified from bidding on any RFP or similar request for submission issued by any State agency. A proposer that was disqualified under this section because of a pending criminal charge which is subsequently dismissed, results in an acquittal, or is annulled, may notify the Department of Administrative Services, which shall note that information on the list maintained on the State’s internal intranet system, except in the case of annulment the information shall be deleted from the list.

APPENDIX A

STATE OF NEW HAMPSHIRE FORM P-37 (version 12/11/2019)  
AGREEMENT, GENERAL PROVISIONS

**FORM NUMBER P-37 (version 12/11/2019)**

<p><u>Notice:</u> This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.</p>
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**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name		1.2 State Agency Address	
1.3 Contractor Name		1.4 Contractor Address	
1.5 Contractor Phone Number	1.6 Account Number	1.7 Completion Date	1.8 Price Limitation
1.9 Contracting Officer for State Agency		1.10 State Agency Telephone Number	
1.11 Contractor Signature  Date:		1.12 Name and Title of Contractor Signatory	
1.13 State Agency Signature  Date:		1.14 Name and Title of State Agency Signatory	
1.15 Approval by the N.H. Department of Administration, Division of Personnel ( <i>if applicable</i> )  By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) ( <i>if applicable</i> )  By: _____ On: _____			
1.17 Approval by the Governor and Executive Council ( <i>if applicable</i> )  G&C Item number: _____ G&C Meeting Date: _____			

**2. SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 (“State”), engages contractor identified in block 1.3 (“Contractor”) to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference (“Services”).

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 (“Effective Date”).

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.**

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete

compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3. The Contractor agrees to permit the State or United States access to any of the Contractor’s books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State’s representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer’s decision shall be final for the State.

**8. EVENT OF DEFAULT/REMEDIES.**

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder (“Event of Default”):

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

**9. TERMINATION.**

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State’s discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report (“Termination Report”) describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State’s discretion, the Contractor shall, within 15 days of notice of early termination, develop and submit to the State a Transition Plan for services under the Agreement.

**10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

10.1 As used in this Agreement, the word “data” shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

10.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

10.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

**11. CONTRACTOR’S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers’ compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.**

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. “Change of Control” means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**13. INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this

paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

**14. INSURANCE.**

14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

**15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States

Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**17. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

**18. CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

**19. CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

**20. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.