

Appendix [#]

NEIWPCC Standard Clauses

DISCLAIMER: *The following Standard Clauses are provided as a sample only. They are subject to modification and may be revised to align with the specific requirements of the applicable funding source, as well as the roles and responsibilities of the recipient and/or subrecipient of the funding. Final Clauses will be determined based on the particular circumstances and compliance obligations relevant to each agreement*

- A. Work Outside the Scope of the Agreement.** The [Subrecipient/ Contractor] agrees to not perform work outside the scope of the Agreement, unless such work is authorized by a properly executed, amendment to the Agreement. The [Subrecipient/ Contractor] acknowledges that NEIWPCC cannot authorize payment for work that is not authorized by this Agreement or any amendment thereto.
- B. Notice of Circumstances Expected to Adversely Affect the [Subrecipient/ Contractor]’s Performance.** The [Subrecipient/ Contractor] agrees to immediately notify NEIWPCC upon learning of any circumstances that can reasonably be expected to adversely affect the [Subrecipient/ Contractor]’s delivery of services under this Agreement. If such notification is provided verbally, the [Subrecipient/ Contractor] agrees to follow the initial verbal notice with a written notice to NEIWPCC within three business days, including a description of the circumstances and the actions the [Subrecipient/ Contractor] is taking to address the matter.
- C. Warranties and guarantees.**
- i. Agreement Deliverables.** The [Subrecipient/ Contractor] warrants and represents that the work required by this Agreement will be performed in accordance with all terms and conditions contained in this Agreement.
 - ii. Compliance with Laws.** The [Subrecipient/ Contractor] warrants and represents that, throughout the term of the Agreement, in the performance of its obligations under the Agreement, it will: (i) comply with all applicable laws, ordinances, rules and regulations of any governmental entity; (ii) pay, at its sole expense, all applicable permits, licenses, tariffs, tolls, and fees; and (iii) give all notices required by any laws, ordinances, rules, and regulations of any governmental entity.
 - iii. Workmanship Warranty.** The [Subrecipient/ Contractor] warrants and represents that all services and deliverables will meet the completion criteria set forth in the Agreement and that services will be provided in a professional and workmanlike manner in accordance with the highest applicable industry standards.
 - iv. Personnel Eligible for Employment.** The [Subrecipient/ Contractor] warrants and represents that all personnel performing work under this Agreement are qualified to provide such services and eligible for employment in the United States. The [Subrecipient/ Contractor] agrees to provide such proof of compliance as is required by NEIWPCC.
 - v. Survival of Warranties.** All warranties contained in the Agreement will survive termination of the Agreement.
- D. Indemnification, Limitation on Liability.**
- i. Indemnification.** To the fullest extent permitted by law, the [Subrecipient/ Contractor] shall defend, indemnify, and hold harmless NEIWPCC, and its commissioners, agents, and employees

(hereinafter referred to as “Indemnatee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the [Subrecipient/ Contractor] or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers’ Compensation Law or arising out of the failure of the [Subrecipient/ Contractor] to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by [Subrecipient/ Contractor] from and against all Claims. It is agreed that [Subrecipient/ Contractor] will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this Agreement, the [Subrecipient/ Contractor] agrees to waive all rights of subrogation against NEIWPCC, and its commissioners, agents, and employees for losses arising from the work performed by the [Subrecipient/ Contractor] for NEIWPCC. This section is not subject to the limitation of liability provisions of the Agreement.

ii. Indemnification for Intellectual Property Infringement. To the fullest extent permitted by law, the [Subrecipient/

Contractor] shall defend, indemnify, and hold harmless NEIWPCC, and its commissioners, agents, and employees (hereinafter referred to as “Indemnatee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret, or other third-party proprietary right in relation to the services, products, documentation, or deliverables furnished or utilized by the [Subrecipient/ Contractor] under this Agreement. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by [Subrecipient/ Contractor] from and against all Claims. It is agreed that [Subrecipient/ Contractor] will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this Agreement, the [Subrecipient/ Contractor] agrees to waive all rights of subrogation against NEIWPCC, and its commissioners, agents, and employees for losses arising from the work performed by the [Subrecipient/ Contractor] for NEIWPCC. This section is not subject to the limitation of liability provisions of the Agreement.

E. Consent to Post. The [Subrecipient/ Contractor] consents to the posting of the [Subrecipient/ Contractor]’s project reports and submittals on NEIWPCC’s website and the funding source’s website. Notwithstanding the foregoing, if the [Subrecipient/ Contractor] claims that any such documents contain confidential information or trade secrets that is protected from disclosure,

then the [Subrecipient/ Contractor] may notify NEIWPCC and the project funding source of such claim at the time of submittal of such, and clearly mark each such document or the pertinent portion thereof as “**PROTECTED FROM DISCLOSURE,**” and include in its notice of claim the legal citation to the statutory and/or regulatory sources which provide the legal basis requiring NEIWPCC and the project funding source to provide such protection.

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

G. Termination.

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

H. Default.

- i. If either party breaches a material provision of this Agreement, which breach remains uncured for a period of 15 days after written notice thereof from the other party specifying the breach (or if such breach cannot be completely cured within the 15-day period, such longer period of time approved by the non-breaching party, provided that the breaching party proceeds with reasonable diligence to completely cure the breach), or if the [Subrecipient/

Contractor] shall cease conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or shall avail itself of or become subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, then and in any such event, the other party may, at its option, terminate this Agreement upon 10 days' written notice and exercise such other remedies as shall be available under this Agreement, at law and/or equity.

- ii. No delay or omission to exercise any right, power, or remedy accruing to either party upon breach or default by the other under this Agreement shall impair any such right, power, or remedy or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.
- iii. If, due to default that remains uncured for the period provided herein, a third party shall commence to perform the [Subrecipient/ Contractor]'s obligations under this Agreement, NEIWPCC shall thereafter be released from all obligations to the [Subrecipient/ Contractor] hereunder, including any obligation to make payment to the [Subrecipient/ Contractor]; provided, however, that NEIWPCC shall continue to be obliged to pay for any and all work provided prior to any such date, and if any lump-sum payment has been made, NEIWPCC shall be entitled to a pro-rata refund of such payment.

- I. **Nondisclosure.** The [Subrecipient/ Contractor] is prohibited from releasing any project work products to the public, including draft and/or final Quarterly or Final Reports, data, maps, and charts, without NEIWPCC's prior written consent, except to the extent disclosure is required by federal or state law, regulation, or a court order.
- J. **Press Releases.** The [Subrecipient/ Contractor] agrees that no brochure, news/media/press release, public announcement, memorandum, or other information of any kind regarding the Agreement shall be disseminated in any way to the public, nor shall any presentation be given regarding the Agreement without the prior written approval of NEIWPCC, which written approval shall not be unreasonably withheld or delayed provided, however, that the [Subrecipient/ Contractor] shall be authorized to provide copies of the Agreement and answer any questions relating thereto to any state or federal regulators or, in connection with its financial activities, to financial institutions for any private or public offering.
- K. **Subcontracting.** Neither the whole nor any part of this Agreement may be further subcontracted by [Subrecipient/ Contractor] without the prior written consent of NEIWPCC.
- L. **Independent Contractor Acknowledgement.** The [Subrecipient/ Contractor] acknowledges and agrees that the [Subrecipient/ Contractor] is an independent contractor and is not an agent, servant, or employee of NEIWPCC. The [Subrecipient/ Contractor] declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities.

M. Indirect Cost Rates. For [Subrecipient/ Contractor]s *with* a current Negotiated Indirect Cost Rate Agreement (NICRA) on file with a federal agency, budgets and amended budgets must maintain consistency with the NICRA and the requirements of the Request for Proposals (RFP). For [Subrecipient/ Contractor]s *without* a current NICRA, budgets and amended budgets must maintain consistency with the requirements of the RFP and may not exceed 15% of Modified Total Direct Costs (MTDC). As provided in 2 CFR § 200.308, if there is a change in key personnel specified in the Scope of Work, or the [Subrecipient/ Contractor]'s project director is absent for more than three months or reduces time devoted to the project by 25 percent or more, the [Subrecipient/ Contractor] must request prior written approval from NEIWPCC for those changes.

N. Quality Assurance Project Plan (QAPP) Compliance. In accordance with 2 CFR § 1500.12, the [Subrecipient/ Contractor] is responsible for developing and implementing quality assurance and quality control procedures, specifications and documentation that are sufficient to produce data of adequate quality to meet project objectives. If a QAPP is required, the [Subrecipient/ Contractor] must submit the QAPP to NEIWPCC at least 60 days prior to the initiation of data collection or data compilation. The QAPP must be completed and approved by NEIWPCC and EPA prior to direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology. The [Subrecipient/ Contractor] is responsible for identifying funded activities that fall under QAPP requirements and informing NEIWPCC of these activities. The [Subrecipient/ Contractor] may not commence work covered by the QAPP, and NEIWPCC may not reimburse the [Subrecipient/ Contractor] for such work, prior to

QAPP approval by EPA. NEIWPCC may reimburse the [Subrecipient/ Contractor] for non-covered expenses, including costs to develop the QAPP itself, prior to approval.

O. Water Quality Data. The [Subrecipient/ Contractor] agrees to ensure that all water quality data that is generated in accordance with an EPA approved Quality Assurance Project Plan is transmitted into EPA's Water Quality Exchange (WQX).

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

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

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

S. Assurances. By signing this Agreement, the [Subrecipient/ Contractor] certifies that:

- i. It is not delinquent on repayment of any Federal debt including direct and guaranteed loans and other debt as defined in OMB Circular A-129, "Managing Federal Credit Programs."
- ii. It is presently not debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from covered transactions by any Federal department or agency in accordance with Executive Order 12549 (34 CFR 85.510).
- iii. It has not, within three (3) years preceding this offer, been convicted of or had a civil

- judgment rendered against them for commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- iv. No personnel working on this project are presently indicted for, or otherwise criminally or civilly charged by a government entity.
 - v. It is complying with the Drug-Free Workplace Act of 1988 (34 CFR Part 85, Subpart F).
 - vi. It is in complying with Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.
 - vii. It is in complying with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) regarding restrictions on lobbying.
 - viii. Funds expended under this award will comply with the applicable Federal cost principles.
 - ix. It will comply with EPA's Scientific Integrity Policy when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this award condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue.
 - x. It does not have any known conflicts of interest pertaining to work on this project.
- T. Choice of Law.** The Agreement shall be governed by the laws of the Commonwealth of Massachusetts, except that any provision in this Agreement that refers to any federal law or agency rule or regulation shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies and quasi-judicial agencies of the federal government.
- U. NEIWPCC and LCBP Logos.** All products and materials (including but not limited to agendas, press releases, web pages) associated with this project and/or developed under this Contract must include Lake Champlain Basin Program and NEIWPCC logos and contain the following statement: "This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement («Grant_») to NEIWPCC in partnership with the Lake Champlain Basin Program." All publications associated with this project and/or developed under this Agreement must include the Lake Champlain Basin Program and NEIWPCC logos and contain the following statement: "This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement («Grant_») to NEIWPCC in partnership with the Lake Champlain Basin Program (LCBP). NEIWPCC manages LCBP's personnel, contract, grant, and budget tasks and provides input on the program's activities through a partnership with the LCBP. The contents of this document do not necessarily reflect the views and policies of NEIWPCC, the LCBP, or the EPA, nor does NEIWPCC, the LCBP or the EPA endorse trade names or recommend the use of commercial products mentioned in this document." The provisions of this clause shall survive the expiration or earlier termination of this Agreement.