

SERVICE AGREEMENT

Between

The New Jersey Sustainable Energy Joint Meeting hereinafter the **NJSEM** and

Maley Givens hereinafter the **SERVICE PROVIDER**

NOW, THEREFORE, IT IS AGREED by and between the **NJSEM** and the **SERVICE PROVIDER** as follows:

APPOINTMENT: The SERVICE PROVIDER is hereby appointed and retained as **General Counsel and NJSEM Attorney** for the NJSEM to provide the services detailed in the NJSEM's By-Laws and Joint Contract and as required by the State Executive Committee. The term of this appointment shall commence on January 1, 2019 and continue until December 31, 2019 (hereinafter **Contract Term**). This appointment was made in accordance with a fair and open process pursuant to N.J.S.A. 19:44A-20.4 et. seq.

STATED OBJECTIVES: To provide the NJSEM with legal representation and advice in the procurement of energy supplies for the NJSEM members and to provide the NJSEM with legal representation and advice any other legal matter affecting the NJSEM, when requested in writing by the NJSEM Executive Director.

STANDARD PROVISIONS: Unless otherwise modified in writing, the contract **standard provisions** adopted by the NJSEM and included in Exhibit A attached hereto shall apply to this agreement. The **Standard Provisions** are modified as follows:

INSURANCE: SERVICE PROVIDER shall provide, at its own cost and expense, proof of the following minimum insurance to the NJSEM: Professional Liability Insurance: \$1,000,000/\$1,000,000 aggregate. No other insurance is required.

PAYMENT: Payment shall be made in accordance with the requirements set forth herein under the heading "Compensation".

SERVICE PROVIDER REPRESENTATIVES: The SERVICE PROVIDER's designated representative(s) is M. James Maley, Esquire, and Erin Simone, Esquire

NOTICE: Notices under this Agreement shall be sent to:

M. James Maley, Jr., Esq.
Maley Givens
1150 Haddon Avenue, Suite 210
Collingswood, NJ 08108

NJSEM
c/o PERMA
9 Campus Drive, Suite 216
Parsippany, NJ 07054
Attn: Executive Director

SCOPE OF SERVICES: During the Contract Term, the SERVICE PROVIDER will:

- (a) Perform all of the duties of General Counsel for the NJSEM as the same are set forth in the Bylaws, applicable statutes, regulations and policies adopted by the NJSEM State Executive Committee.
- (b) Provide legal advice to the NJSEM's State Executive Committee.
- (c) Provide reports to the NJSEM's State Executive Committee on such matters and at such times as the NJSEM's State Executive Committee may direct.
- (d) Assist the NJSEM's Executive Director and the Energy Consultant in the analysis of procurement of energy and contract negotiation/execution, with periodic reports to the NJSEM's State Executive Committee with such recommendations as may, in the opinion of the attorney, assist in the operation of the NJSEM.
- (e) Attend, through its designated representative, such meetings of the NJSEM's State Executive Committee as may be requested by the NJSEM State Executive Committee and NJSEM Executive Director.
- (f) Represent the NJSEM in claims and actions on behalf of, and in defense of, the NJSEM; and
- (g) To professionally perform such other services as may be required by the NJSEM's State Executive Committee, Executive Director, the NJSEM Bylaws, and/or the statutes or regulations pertaining to the NJSEM.

COMPENSATION: During the term of this Agreement, the NJSEM shall pay the SERVICE PROVIDER for general legal administration services for the calendar year based upon the current membership/population participating in the NJSEM, a monthly **NON-REFUNDABLE** retainer fee of \$0.0002 of the current add on fee of \$0.0015 which equates to 13.33% of the total commission dollars collected by NJSEM for Electric Service Supply and a fee of \$0.0025 of the current add on fee of \$0.020 which equates to 12.50% of the total commission dollars collected by NJSEM for Natural Gas Supply of the revenues paid to the NJSEM as a result of energy procurement auctions or bids or sales ("NJSEM Revenues") not to exceed \$200,000 (Two Hundred Thousand Dollars) total during the Contract Term ("Retainer Fee"). Because the exact amount legal services which will be provided to the NJSEM is unknown and an estimate the amount of time which will spend on in providing legal services cannot be ascertained, the non-refundable Retainer Fee is being provided in order to ensure that the SERVICE PROVIDER stands ready to provide representation and legal advice to the NJSEM at any time during the Contract Term.

The SERVICE PROVIDER shall receive a minimum total Service Fee of \$100,000 (One Hundred Thousand Dollars). In the event that the total Service Fee is less than \$100,000 (One Hundred Thousand Dollars), the SERVICE PROVIDER shall bill the NJSEM for the difference.

At each regularly scheduled meeting of the NJSEM's Executive Committee following receipt of the NJSEM Revenues, the NJSEM's Executive Committee shall authorize disbursement of said monies in accordance with this Agreement. Payment of the non-refundable Retainer Fee shall be made by the NJSEM within 20 business days following the meeting of the NJSEM's Executive Committee in which disbursement of the NJSEM Revenues is authorized. This payment schedule is subject to the Rules and Regulations promulgated by the Department of Community Affairs and any other governing regulatory body.

In the event that this Agreement is terminated by either party pursuant to the **Standard Provisions** of this Agreement, the NJSEM shall have no further obligation to pay the SERVICE PROVIDER any portion of the non-refundable Retainer Fee for any month in the Contract Term in which the SERVICE PROVIDER is no longer obligated to stand ready to provide representation and legal advice. If the Agreement is terminated by either party pursuant to the **Standard Provisions** of this Agreement in the middle of any month, the SERVICE PROVIDER will refund the pro-rated portion of the non-refundable Retainer fee paid in said month representing the days in which the SERVICE PROVIDER is no longer obligated to stand ready to provide representation and legal advice for said month.

Furthermore, the SERVICE PROVIDER may petition the NJSEM's Executive Committee for additional compensation if the NJSEM experiences a significant growth in its membership during the term of this Agreement, which results in an increase in the services described in this Agreement.

SPECIAL PROVISIONS RELATING TO COMPENSATION: The compensation or service fee set forth in this Agreement includes the following special provisions:

(a) The non-refundable retainer fee above includes the following, at not additional cost:

- All administrative staff, including support staff, necessary to perform the duties required hereunder.
- Use of all physical equipment, and there shall be no further charges for rent, light, heat, office equipment or similar items.
- Use of in-house computer services and all software and hardware therefore. In-house computer services and all software and hardware provided by the SERVICE PROVIDER for the NJSEM's use are understood as being, and shall remain the property of the SERVICE PROVIDER. All data and records which pertain to the business and activities of the NJSEM shall, however, be the property of the NJSEM and upon the request of the NJSEM's Executive Committee, Executive Director, the SERVICE PROVIDER shall provide a complete and current copy of all such data and records to the NJSEM's Executive Committee, or Executive Director in either hard copy or on computer tape or disk, or both, as the NJSEM's Executive Committee or Executive

Director may specify providing the SERVICE PROVIDER is able to comply with the type of copy request.

- Expenses reasonably incurred in representing the NJSEM's interests, including but not limited to photocopies, long distance telephone charges, telefax charges, court costs and other reasonable expenses necessarily incurred in representation of the NJSEM.
- (b) SERVICE PROVIDER shall take all reasonable steps necessary to safeguard data files, reports or other information from loss, destruction or erasure. Liability for cost or expense of replacing for damages resulting from the loss of such data shall be borne by the SERVICE PROVIDER unless, at the time of loss, said data was in the exclusive custody of the NJSEM.
- (c) The SERVICE PROVIDER acknowledges that the NSEM is relying upon the representations made by the SERVICE PROVIDER's skill and judgment in identifying the work which needs to be performed, and the manner and method in which it should be performed. If there are additional services which would normally be required to necessary to achieve the Stated Objectives, the SERVICE PROVIDER shall be obligated to provide them within the compensation stated in this Agreement, even though said services are not specifically referred to in this Agreement.

SPECIAL PROVISIONS – PROFESSIONAL SERVICES CONTRACTS: In addition to the services detailed in the NJSEM's Bylaws and applicable statutes, the following provisions shall apply to this professional services contract:

- (a) The SERVICE PROVIDER's work will be in accordance with the manner, method and techniques normally used by competent professional attorneys in performing the assigned services. All of the SERVICE PROVIDER's work under this Agreement will be in accordance with the standards of its profession and all work performed shall comply with all applicable New Jersey laws and regulations governing the provision of the services set forth in this Agreement.
- (b) The SERVICE PROVIDER represents and warrants that it is competent, knowledgeable and experienced in the type of work to be performed. The SERVICE PROVIDER further represents and warrants that it is familiar with practices in the profession regarding the type of work to be performed under this Agreement and with the laws and regulations which govern the same. The NJSEM has selected the SERVICE PROVIDER based upon the SERVICE PROVIDER's representation of its knowledge and expertise in the area.
- (c) This Agreement is awarded to the SERVICE PROVIDER pursuant to the professional services exception of the Local Public Contracts Law of the State of New Jersey and is subject to compliance with the specific provisions of N.J.S.A. 40A:11-5(a) pertaining to professional service contracts.. The SERVICE PROVIDER will remain, throughout the term of this Agreement authorized to do business in the State of New Jersey. The SERVICE PROVIDER understands that it is unlawful for the NJSEM to make payment

for services to any entity, in it is not authorized to do business in the State of New Jersey. A copy of the SERVICE PROVIDER's Business Registration Certificate is attached hereto as Exhibit B.

- (d) Throughout the term of this Agreement, the SERVICE PROVIDER shall maintain all professional licenses required of the SERVICE PROVIDER to render services in the State of New Jersey. A copy of the applicable professional license is attached hereto as Exhibit C.

IN WITNESS WHEREOF, this Agreement has been executed on this _____ day of _____, 2019 for the purposes and the term specified herein.

NJSEM

SERVICE PROVIDER.

Attest:

Exhibit A

STANDARD PROVISIONS Adopted by the NJSEM on April 1, 2010 Revised by the NJSEM on May 19, 2015

Unless otherwise provided, the following provisions shall apply to the SERVICE AGREEMENT between the SERVICE PROVIDER and the NJSEM.

INDEMNIFICATION AND HOLD HARMLESS: SERVICE PROVIDER shall indemnify, defend and hold the NJSEM, its Commissioners, appointed officials and member municipalities harmless from any and all claims or liabilities arising out of the activities of the SERVICE PROVIDER, its employees and agents in connection with all activities undertaken by the SERVICE PROVIDER, pursuant to this Agreement. It is the intention of the parties that any claim for relief of any type being asserted against the NJSEM, its Commissioners, appointed officials and member municipalities, based upon any act or omission of the SERVICE PROVIDER, its affiliates and successors, shall be the responsibility of the SERVICE PROVIDER, and the SERVICE PROVIDER shall hold the NJSEM harmless from same.

INSURANCE: SERVICE PROVIDER shall provide, at its own cost and expense, proof of the following minimum insurance to the NJSEM:

Workers' Compensation: Statutory plus \$100,000/\$500,000/\$100,000 for employers' liability:

General Liability: \$1,000,000/\$2,000,000 CSL for bodily injury, property damage, and personal injury:

Automobile Liability: \$1,000,000 CSL covering all owned/non-owned, and hired automobiles:

Professional Liability Insurance: \$1,000,000/\$1,000,000 aggregate:

Bond: If required by the by-laws or pursuant to NJAC 11:15-2 et seq., The SERVICE PROVIDER shall be bonded in a form and amount acceptable to the NJSEM's governing body

Failure by the SERVICE PROVIDER to supply written evidence of these coverages shall result in default. It is required that, wherever possible, the NJSEM be named as an "additional named insured" on any certificate of insurance. The insurance companies for the above coverages must be licensed, solvent and acceptable to the NJSEM. SERVICE PROVIDER shall not take any action to cancel or materially change any of the above insurance required under this Agreement without NJSEM approval. Maintenance of insurance under this section shall not

relieve SERVICE PROVIDER of any liability greater than the insurance coverage.

POLITICAL CONTRIBUTIONS: Compliance with the New Jersey Campaign Contributions and Expenditures Reporting Act. N.J.S.A. 19:44A-1 et seq. shall be a material term and condition of this Agreement and shall be binding upon the parties hereto upon execution of this Agreement. The following provision only applies to the SERVICE PROVIDER if the appointment was not made pursuant to a fair and open process in accordance with N.J.S.A. 19:44A-20.4 et seq. By acceptance of this Agreement, the SERVICE PROVIDER certifies that in the one year period preceding the date that this Agreement is legally authorized that neither the SERVICE PROVIDER business entity nor any persons holding 10% or more of the issued and outstanding stock of the SERVICE PROVIDER business entity or entitled to receive the benefit of 10% or more of the revenues and/or profits of the SERVICE PROVIDER business entity have made any reportable contributions pursuant to N.J.S.A. 19:44A-1 et seq. that, pursuant to P.L. 2004, c.19 would bar the award of this Agreement. This includes any reportable contribution to any official, candidate, joint candidates committee or political party representing elected officials or candidates as defined pursuant to N.J.S.A. 19:44A-3(p), (q) and (r) of any member local unit of the NJSEM. Further, the SERVICE PROVIDER and all persons holding 10% or more of the issued and outstanding stock of the SERVICE PROVIDER business entity or entitled to receive the benefit of 10% or more of the revenues and/or profits of the SERVICE PROVIDER business entity shall not make such contributions during the period of this Agreement. It shall be a breach of this contract for the SERVICE PROVIDER business entity nor any persons holding 10% or more of the issued and outstanding stock of the SERVICE PROVIDER business entity or entitled to receive the benefit of 10% or more of the revenues and/or profits of the SERVICE PROVIDER business entity to engage in any of the prohibited acts set forth in N.J.S.A. 19:44A-20.21 and NJSEM shall be entitled to immediately terminate the Agreement without notice.

AGREEMENT TERMINATION: The NJSEM may terminate this Agreement, at any time during the term thereof by the giving of ninety (90) days written notice, setting forth the cause or causes for termination to the SERVICE PROVIDER. The SERVICE PROVIDER shall have the opportunity for a hearing before the NJSEM's State Executive Committee. The NJSEM's State Executive Committee shall

determine whether the reasons for the termination can be amicably and reasonably resolved or whether, in its sole determination, the Agreement shall be terminated. The SERVICE PROVIDER may terminate this Agreement, at any time during the term thereof, by the giving of ninety (90) days written notice.

OWNERSHIP OF RECORDS: All records and data of any kind relating to the NJSEM shall belong to the NJSEM, and shall be surrendered to the NJSEM upon expiration or termination of this Agreement. At all times during the term of this Agreement and for a period of five (5) years, from the NJSEM, its appointed officials and other designated representatives, as authorized by the NJSEM, shall have access to records and files maintained by the SERVICE PROVIDER for the NJSEM during normal business hours. Furthermore, such records, books, and files relating to the operation and business of the NJSEM are the property of the NJSEM, regardless of site stored. Information released to the SERVICE PROVIDER by the NJSEM for the purpose of performing the services as outlined herein shall be used only in connection with the performance of said duties. In addition, Records must be made available to the state office of comptroller and any auditor of the NJSEM upon request.

PAYMENT: Payment shall be made in monthly installments (unless otherwise specified), provided the SERVICE PROVIDER submits a duly authorized voucher at least 10 days prior to the next regularly scheduled meeting of the NJSEM's governing body. Final Payment will be withheld until the vendor's continued service is determined. If the vendor's Agreement will not be renewed or is terminated – final payment will not be made until all provisions of the Agreement have been satisfied.

This payment schedule is subject to any rules and regulations promulgated by the Department of Banking & Insurance and the Department of Community Affairs.

SPECIAL PROVISIONS RELATING TO COMPENSATION. The compensation or service fee set forth in this Agreement includes:

All administrative staff, including support staff, necessary to perform the work required of the SERVICE PROVIDER.

Use of all physical equipment, and there shall be no further charges for rent, light, heat, office equipment or similar items.

In-house computer services including all software and hardware provided by the SERVICE PROVIDER for the NJSEM's use, it being understood that the software and hardware is and shall remain the property of the SERVICE PROVIDER. All data and records which pertain to the business and activities of the NJSEM shall be the property of the NJSEM and upon the request of the NJSEM's Executive Committee or Executive Director/Administrator the SERVICE PROVIDER shall provide a complete and current copy of all such data and records to the NJSEM's Executive Committee or Executive Director/Administrator in either hard copy or on computer tape or disk or both as the NJSEM's Executive Committee or Executive Director/Administrator

may specify providing the SERVICE PROVIDER is able to comply with the type of copy request.

Furthermore, the SERVICE PROVIDER shall take all reasonable steps necessary to safeguard data files, reports or other information from loss, destruction or erasure. Liability for cost or expense of replacing for damages resulting from the loss of such data shall be borne by the SERVICE PROVIDER unless at the time of loss, said data was in the exclusive custody of the NJSEM.

INDEPENDENT CONTRACTOR STATUS: The SERVICE PROVIDER at all times shall be an independent Contractor, and employees of SERVICE PROVIDER shall in no event be considered employees of the NJSEM. No agency relationship between the parties, except as expressly provided for herein, shall exist either as a result of the execution of this Agreement or performance there under.

ENTIRE AGREEMENT: This instrument contains the entire Agreement of the parties hereto and may not be amended, modified, released or discharged, in whole or in part, except by an instrument in writing signed by the parties hereto.

NEW JERSEY LAW: This Agreement shall be governed by, and construed in accordance with, the laws of the State of New Jersey.

BINDING ON SUCCESSORS AND ASSIGNS: Except as otherwise provided herein, all terms, provisions and conditions of this Agreement shall be binding on and inure to the benefit of the parties hereto, their respective personal representatives, successors and assigns.

NO ASSIGNMENT: The SERVICE PROVIDER shall not assign This Agreement without the specific written consent of the NJSEM.

MODIFICATION: No modification of this Agreement shall be valid or binding unless the modification shall be in writing and executed by the NJSEM and the SERVICE PROVIDER.

NO WAIVER: No waiver of any term, provision or condition contained in this Agreement, nor any breach of any such term, provision or condition shall constitute a waiver of any subsequent breach of any such term, provision or condition by either party, or justify or authorize the non-observance on any other occasion of the same or any other term, provision or condition of this Agreement by either party.

PARTIAL INVALIDITY: If any term, provision or condition contained in this Agreement, or the application thereof to any person or circumstances shall, at any time, or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which this Agreement is invalid or unenforceable, shall not be affected thereby, and each term, provision or condition contained in this Agreement shall be valid and enforced to the fullest extent permitted by the law provided, however,

that no such invalidity shall in any way reduce services to be performed by the SERVICE PROVIDER to the NJSEM.

CAPTIONS: The captions or paragraph headings contained in this Agreement are solely for purpose of convenience and shall not be deemed part of this Agreement for the purpose of construing the meaning thereof or for any other purpose.

CONFLICT of INTEREST: This Agreement may be voided by the NJSEM Commissioners if the SERVICE PROVIDER fails to disclose an actual or potential conflict of interest as defined in the NJSEM's Bylaws, or in N.J.S.A. 40A:9-22.1 et. Seq. (the "Local Government Ethics Laws").

PROPRIETARY INFORMATION: The SERVICE PROVIDER shall not reveal to any third party any information that the NJSEM has defined as proprietary without the express written consent of the NJSEM. In addition, the SERVICE PROVIDER shall promptly advise the NJSEM upon being interviewed or retained by a prospective new client operating in the field of energy generation services for public entities or public agencies in the State of New Jersey. Failure to comply with these requirements shall represent cause for termination of this agreement, in accordance with THE TERMINATION CLAUSE of this agreement.

COMPLIANCE WITH LAWS: The SERVICE PROVIDER agrees to comply with all laws and regulations applicable to the performance of the work authorized in this Agreement.**ELECTRONIC MAIL:** The SERVICE PROVIDER agrees that it shall maintain and utilize the electronic mail systems in order to communicate with other service providers of the NJSEM and to meet reporting requirements of the NJSEM Executive Director/Administrator's office. The SERVICE PROVIDER agrees that all financial and agenda reports shall be submitted in electronic formats established by the NJSEM State Executive Committee via electronic mail. The SERVICE PROVIDER further agrees that all personnel working under this Agreement shall direct access to the SERVICE PROVIDER's electronic mail system and shall have individual electronic mail addresses.

AFFIRMATIVE ACTION: During the performance of this Agreement, the SERVICE PROVIDER agrees as follows:

The SERVICE PROVIDER, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the SERVICE PROVIDER will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not limited to the following:

employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The SERVICE PROVIDER agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The SERVICE PROVIDER, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the SERVICE PROVIDER, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The SERVICE PROVIDER, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other Agreement or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the SERVICE PROVIDER'S commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The SERVICE PROVIDER where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq. as amended and supplemented from time to time and the Americans with Disabilities Act.

The SERVICE PROVIDER agrees to make good faith efforts to employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2, or a binding determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

The SERVICE PROVIDER agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The SERVICE PROVIDER agrees to revise any of its testing procedures, if necessary, to assure that all personal testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the applicable employment goals, the SERVICE PROVIDER agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The SERVICE PROVIDER shall submit to the NJSEM, after notification of award but prior to execution of a goods and services Agreement, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval
Certificate of Employee Information Report
Employee Information Report Form AA302

The SERVICE PROVIDER shall furnish such reports or other documents to the Division of Agreement Compliance & EEO as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Agreement Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C.17:27.

SERVICE AGREEMENT

Between

The New Jersey Sustainable Energy Joint Meeting hereinafter the **NJSEM** and

Nisivoccia LLP hereinafter the **SERVICE PROVIDER**

NOW, THEREFORE, IT IS AGREED by and between the **NJSEM** and the **SERVICE PROVIDER** as follows:

APPOINTMENT. The SERVICE PROVIDER is hereby appointed and retained as **Auditor** for the NJSEM to provide the services detailed in the NJSEM's By-Laws, Joint Contract and in this Agreement. The term of this appointment shall commence on January 1, 2019 and continue until December 31, 2019 (hereinafter **Contract Term**). This appointment was made in accordance with a fair and open process pursuant to N.J.S.A. 19:44A-20.4 et. seq.

STATED OBJECTIVES: To provide the NJSEM with accounting services.

STANDARD PROVISIONS: Unless otherwise modified in writing, the contract **standard provisions** adopted by the NJSEM on and included in Exhibit A attached hereto shall apply to this agreement. The **Standard Provisions** are modified as follows:

INSURANCE: SERVICE PROVIDER shall provide, at its own cost and expense, proof of the following minimum insurance to the NJSEM: Professional Liability Insurance: \$1,000,000/\$1,000,000 aggregate. No other insurance is required.

SERVICE PROVIDER REPRESENTATIVES: The SERVICE PROVIDER's designated representative(s) are Francis Jones and David Evans. The designated representative shall be a person who is a Registered Municipal Accountant in the State of New Jersey. The SERVICE PROVIDER shall make no change in the designated representative without the consent of the NJSEM's State Executive Committee.

NOTICE: Notices under this Agreement shall be sent to:

Nisivoccia LLP
200 Valley Road, Suite 300
Mount Arlington, NJ 07856
Attn: Bud Jones and David Evans

NJ SEM
c/o PERMA
9 Campus Drive, Suite 216
Parsippany, NJ 07054
Attn: Executive Director

SCOPE OF SERVICES: During the Contract Term, the SERVICE PROVIDER will:

- (a) Provide an annual audit of the financial statements of the NJSEM as of December 31 of the Contract Term, which shall be completed and presented no later than June 30 following the expiration of the Contract Term. The examinations shall be made in accordance with generally accepted in the United State of America auditing standards and in compliance with the audit requirements as prescribed by the Division of Local Government Services, New Jersey Department of Community Affairs, and, accordingly, will include such tests of accounting records and other such auditing procedures as will be considered necessary in the circumstances. The review and audit covering the examination will be certified by the SERVICE PROVIDER in a form acceptable to the Division of Local Government Services.
- (b) Perform all of the duties of Auditor for the NJSEM as the same are set forth in the Bylaws, applicable statutes, regulations and policies adopted by the NJSEM State Executive Committee.
- (c) Submit to the NJSEM's State Executive Committee a Management Letter containing recommendations, comments, and suggestions concerning internal control and accounting procedures deemed necessary. The AUDITOR will meet with the NJSEM's State Executive Committee to review the Audit Report and the Management Letter as requested.
- (d) The examination specified herein shall comply with all applicable provisions of the New Jersey Statutes. As a part of the examination, the Auditor will consider the internal control structure of the NJSEM; the objective of which is to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide assurance on the internal control structure. However, the NJSEM will report to the Audit any reportable conditions in the internal control structure that come to the NJSEM's attention during the course of our examination.
- (e) During the course of the examination, should any situation develop which would cause the Auditor to believe that defalcation exists, or that the records are not sufficient to allow the auditor to render an opinion, the Auditor will promptly notify the NJSEM State Executive Committee of the situation and outline the specific corrective action to be taken, including any audit scope changes that will be required and the approximate costs to be incurred.
- (f) Perform such other services as are necessary and customarily incidental to the office of NJSEM Auditor.
- (g) Attend, through its designated representative, such meetings of the NJSEM's State Executive Committee as may be requested by the State Executive Committee and Executive Director/Administrator.
- (h) Assist, where requested, in the preparation of the NJSEM's budget and members' assessments.

- (i) To professionally perform such other duties as may be determined by the NJSEM's State Executive Committee.

COMPENSATION: For the services covered by this Agreement, the NJSEM shall pay to the SERVICE PROVIDER compensation for services a sum of \$4,245 (Four Thousand Two Hundred Forty Five Dollars) for work performed during the Contract Term. Payment shall be made following submission and approval by the Executive Committee of the year-end annual audit report.

Furthermore, the SERVICE PROVIDER may petition the NJSEM's Executive Committee for additional compensation if the NJSEM experiences a significant growth in its membership during the term of this Agreement or any other special circumstance occurs, which results in an increase in the services described in this Agreement.

This payment schedule is subject to the Rules and Regulations promulgated by the Department of Community Affairs and any other governing regulatory body.

SPECIAL PROVISIONS RELATING TO COMPENSATION: The compensation or service fee set forth in Appointment and Special Provisions – Services Clauses of this Agreement includes the following special provisions:

- (a) The hourly rate above includes the following, at not additional cost:

- All administrative staff, including support staff, necessary to perform the duties required hereunder.
- Use of all physical equipment, and there shall be no further charges for rent, light, heat, office equipment or similar items.
- Use of in-house computer services and all software and hardware therefore. In-house computer services and all software and hardware provided by the SERVICE PROVIDER for the NJSEM's use are understood as being, and shall remain the property of the SERVICE PROVIDER. All data and records which pertain to the business and activities of the NJSEM shall, however, be the property of the NJSEM and upon the request of the NJSEM's Executive Committee, Executive Director, the SERVICE PROVIDER shall provide a complete and current copy of all such data and records to the NJSEM's Executive Committee, or Executive Director in either hard copy or on computer tape or disk, or both, as the NJSEM's Executive Committee or Executive Director may specify providing the SERVICE PROVIDER is able to comply with the type of copy request.

- (b) SERVICE PROVIDER shall take all reasonable steps necessary to safeguard data files, reports or other information from loss, destruction or erasure. Liability for cost or expense of replacing for damages resulting from the loss of such data shall be borne by the SERVICE PROVIDER unless, at the time of loss, said data was in the exclusive custody of the NJSEM.

- (c) The SERVICE PROVIDER acknowledges that the NSEM is relying upon the representations made by the SERVICE PROVIDER's skill and judgment in identifying the work which needs to be performed, and the manner and method in which it should be performed. If there are additional services which would normally be required to necessary to achieve the Stated Objectives, the SERVICE PROVIDER shall be obligated to provide them within the compensation stated in this Agreement, even though said services are not specifically referred to in this Agreement.

SPECIAL PROVISIONS – PROFESSIONAL SERVICES CONTRACTS: In addition to the services detailed in the NJSEM's Bylaws and applicable statutes, the following provisions shall apply to this professional services contract:

- (a) The SERVICE PROVIDER's work will be in accordance with the manner, method and techniques normally used by competent professional attorneys in performing the assigned services. All of the SERVICE PROVIDER's work under this Agreement will be in accordance with the standards of its profession and all work performed shall comply with all applicable New Jersey laws and regulations governing the provision of the services set forth in this Agreement.
- (b) The SERVICE PROVIDER represents and warrants that it is competent, knowledgeable and experienced in the type of work to be performed. The SERVICE PROVIDER further represents and warrants that it is familiar with practices in the profession regarding the type of work to be performed under this Agreement and with the laws and regulations which govern the same. The NJSEM has selected the SERVICE PROVIDER based upon the SERVICE PROVIDER's representation of its knowledge and expertise in the area.
- (c) This Agreement is awarded to the SERVICE PROVIDER pursuant to the professional services exception of the Local Public Contracts Law of the State of New Jersey and is subject to compliance with the specific provisions of N.J.S.A. 40A:11-5(a) pertaining to professional service contracts.. The SERVICE PROVIDER will remain, throughout the term of this Agreement authorized to do business in the State of New Jersey. The SERVICE PROVIDER understands that it is unlawful for the NJSEM to make payment for services to any entity, in it is not authorized to do business in the State of New Jersey. A copy of the SERVICE PROVIDER's Business Registration Certificate is attached hereto as Exhibit B.
- (d) Throughout the term of this Agreement, the SERVICE PROVIDER shall maintain all professional licenses required of the SERVICE PROVIDER to render services in the State of New Jersey. A copy of the applicable professional license is attached hereto as Exhibit C.

IN WITNESS WHEREOF, this Agreement has been executed on this _____ day of _____, 2019 for the purposes and the term specified herein.

NJSEM

SERVICE PROVIDER.

Attest:

Exhibit A

STANDARD PROVISIONS Adopted by the NJSEM on April 1, 2010 Revised by the NJSEM on May 19, 2015

Unless otherwise provided, the following provisions shall apply to the SERVICE AGREEMENT between the SERVICE PROVIDER and the NJSEM.

INDEMNIFICATION AND HOLD HARMLESS: SERVICE PROVIDER shall indemnify, defend and hold the NJSEM, its Commissioners, appointed officials and member municipalities harmless from any and all claims or liabilities arising out of the activities of the SERVICE PROVIDER, its employees and agents in connection with all activities undertaken by the SERVICE PROVIDER, pursuant to this Agreement. It is the intention of the parties that any claim for relief of any type being asserted against the NJSEM, its Commissioners, appointed officials and member municipalities, based upon any act or omission of the SERVICE PROVIDER, its affiliates and successors, shall be the responsibility of the SERVICE PROVIDER, and the SERVICE PROVIDER shall hold the NJSEM harmless from same.

INSURANCE: SERVICE PROVIDER shall provide, at its own cost and expense, proof of the following minimum insurance to the NJSEM:

Workers' Compensation: Statutory plus \$100,000/\$500,000/\$100,000 for employers' liability:

General Liability: \$1,000,000/\$2,000,000 CSL for bodily injury, property damage, and personal injury:

Automobile Liability: \$1,000,000 CSL covering all owned/non-owned, and hired automobiles:

Professional Liability Insurance: \$1,000,000/\$1,000,000 aggregate:

Bond: If required by the by-laws or pursuant to NJAC 11:15-2 et seq., The SERVICE PROVIDER shall be bonded in a form and amount acceptable to the NJSEM's governing body

Failure by the SERVICE PROVIDER to supply written evidence of these coverages shall result in default. It is required that, wherever possible, the NJSEM be named as an "additional named insured" on any certificate of insurance. The insurance companies for the above coverages must be licensed, solvent and acceptable to the NJSEM. SERVICE PROVIDER shall not take any action to cancel or materially change any of the above insurance required under this Agreement without NJSEM approval. Maintenance of insurance under this section shall not

relieve SERVICE PROVIDER of any liability greater than the insurance coverage.

POLITICAL CONTRIBUTIONS: Compliance with the New Jersey Campaign Contributions and Expenditures Reporting Act. N.J.S.A. 19:44A-1 et seq. shall be a material term and condition of this Agreement and shall be binding upon the parties hereto upon execution of this Agreement. The following provision only applies to the SERVICE PROVIDER if the appointment was not made pursuant to a fair and open process in accordance with N.J.S.A. 19:44A-20.4 et seq. By acceptance of this Agreement, the SERVICE PROVIDER certifies that in the one year period preceding the date that this Agreement is legally authorized that neither the SERVICE PROVIDER business entity nor any persons holding 10% or more of the issued and outstanding stock of the SERVICE PROVIDER business entity or entitled to receive the benefit of 10% or more of the revenues and/or profits of the SERVICE PROVIDER business entity have made any reportable contributions pursuant to N.J.S.A. 19:44A-1 et seq. that, pursuant to P.L. 2004, c.19 would bar the award of this Agreement. This includes any reportable contribution to any official, candidate, joint candidates committee or political party representing elected officials or candidates as defined pursuant to N.J.S.A. 19:44A-3(p), (q) and (r) of any member local unit of the NJSEM. Further, the SERVICE PROVIDER and all persons holding 10% or more of the issued and outstanding stock of the SERVICE PROVIDER business entity or entitled to receive the benefit of 10% or more of the revenues and/or profits of the SERVICE PROVIDER business entity shall not make such contributions during the period of this Agreement. It shall be a breach of this contract for the SERVICE PROVIDER business entity nor any persons holding 10% or more of the issued and outstanding stock of the SERVICE PROVIDER business entity or entitled to receive the benefit of 10% or more of the revenues and/or profits of the SERVICE PROVIDER business entity to engage in any of the prohibited acts set forth in N.J.S.A. 19:44A-20.21 and NJSEM shall be entitled to immediately terminate the Agreement without notice.

AGREEMENT TERMINATION: The NJSEM may terminate this Agreement, at any time during the term thereof by the giving of ninety (90) days written notice, setting forth the cause or causes for termination to the SERVICE PROVIDER. The SERVICE PROVIDER shall have the opportunity for a hearing before the NJSEM's State Executive Committee. The NJSEM's State Executive Committee shall

determine whether the reasons for the termination can be amicably and reasonably resolved or whether, in its sole determination, the Agreement shall be terminated. The SERVICE PROVIDER may terminate this Agreement, at any time during the term thereof, by the giving of ninety (90) days written notice.

OWNERSHIP OF RECORDS: All records and data of any kind relating to the NJSEM shall belong to the NJSEM, and shall be surrendered to the NJSEM upon expiration or termination of this Agreement. At all times during the term of this Agreement and for a period of five (5) years, from the NJSEM, its appointed officials and other designated representatives, as authorized by the NJSEM, shall have access to records and files maintained by the SERVICE PROVIDER for the NJSEM during normal business hours. Furthermore, such records, books, and files relating to the operation and business of the NJSEM are the property of the NJSEM, regardless of site stored. Information released to the SERVICE PROVIDER by the NJSEM for the purpose of performing the services as outlined herein shall be used only in connection with the performance of said duties. In addition, Records must be made available to the state office of comptroller and any auditor of the NJSEM upon request.

PAYMENT: Payment shall be made in monthly installments (unless otherwise specified), provided the SERVICE PROVIDER submits a duly authorized voucher at least 10 days prior to the next regularly scheduled meeting of the NJSEM's governing body. Final Payment will be withheld until the vendor's continued service is determined. If the vendor's Agreement will not be renewed or is terminated – final payment will not be made until all provisions of the Agreement have been satisfied.

This payment schedule is subject to any rules and regulations promulgated by the Department of Banking & Insurance and the Department of Community Affairs.

SPECIAL PROVISIONS RELATING TO COMPENSATION. The compensation or service fee set forth in this Agreement includes:

All administrative staff, including support staff, necessary to perform the work required of the SERVICE PROVIDER.

Use of all physical equipment, and there shall be no further charges for rent, light, heat, office equipment or similar items.

In-house computer services including all software and hardware provided by the SERVICE PROVIDER for the NJSEM's use, it being understood that the software and hardware is and shall remain the property of the SERVICE PROVIDER. All data and records which pertain to the business and activities of the NJSEM shall be the property of the NJSEM and upon the request of the NJSEM's Executive Committee or Executive Director/Administrator the SERVICE PROVIDER shall provide a complete and current copy of all such data and records to the NJSEM's Executive Committee or Executive Director/Administrator in either hard copy or on computer tape or disk or both as the NJSEM's Executive Committee or Executive Director/Administrator

may specify providing the SERVICE PROVIDER is able to comply with the type of copy request.

Furthermore, the SERVICE PROVIDER shall take all reasonable steps necessary to safeguard data files, reports or other information from loss, destruction or erasure. Liability for cost or expense of replacing for damages resulting from the loss of such data shall be borne by the SERVICE PROVIDER unless at the time of loss, said data was in the exclusive custody of the NJSEM.

INDEPENDENT CONTRACTOR STATUS: The SERVICE PROVIDER at all times shall be an independent Contractor, and employees of SERVICE PROVIDER shall in no event be considered employees of the NJSEM. No agency relationship between the parties, except as expressly provided for herein, shall exist either as a result of the execution of this Agreement or performance there under.

ENTIRE AGREEMENT: This instrument contains the entire Agreement of the parties hereto and may not be amended, modified, released or discharged, in whole or in part, except by an instrument in writing signed by the parties hereto.

NEW JERSEY LAW: This Agreement shall be governed by, and construed in accordance with, the laws of the State of New Jersey.

BINDING ON SUCCESSORS AND ASSIGNS: Except as otherwise provided herein, all terms, provisions and conditions of this Agreement shall be binding on and inure to the benefit of the parties hereto, their respective personal representatives, successors and assigns.

NO ASSIGNMENT: The SERVICE PROVIDER shall not assign This Agreement without the specific written consent of the NJSEM.

MODIFICATION: No modification of this Agreement shall be valid or binding unless the modification shall be in writing and executed by the NJSEM and the SERVICE PROVIDER.

NO WAIVER: No waiver of any term, provision or condition contained in this Agreement, nor any breach of any such term, provision or condition shall constitute a waiver of any subsequent breach of any such term, provision or condition by either party, or justify or authorize the non-observance on any other occasion of the same or any other term, provision or condition of this Agreement by either party.

PARTIAL INVALIDITY: If any term, provision or condition contained in this Agreement, or the application thereof to any person or circumstances shall, at any time, or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which this Agreement is invalid or unenforceable, shall not be affected thereby, and each term, provision or condition contained in this Agreement shall be valid and enforced to the fullest extent permitted by the law provided, however,

that no such invalidity shall in any way reduce services to be performed by the SERVICE PROVIDER to the NJSEM.

CAPTIONS: The captions or paragraph headings contained in this Agreement are solely for purpose of convenience and shall not be deemed part of this Agreement for the purpose of construing the meaning thereof or for any other purpose.

CONFLICT of INTEREST: This Agreement may be voided by the NJSEM Commissioners if the SERVICE PROVIDER fails to disclose an actual or potential conflict of interest as defined in the NJSEM's Bylaws, or in N.J.S.A. 40A:9-22.1 et. Seq. (the "Local Government Ethics Laws").

PROPRIETARY INFORMATION: The SERVICE PROVIDER shall not reveal to any third party any information that the NJSEM has defined as proprietary without the express written consent of the NJSEM. In addition, the SERVICE PROVIDER shall promptly advise the NJSEM upon being interviewed or retained by a prospective new client operating in the field of energy generation services for public entities or public agencies in the State of New Jersey. Failure to comply with these requirements shall represent cause for termination of this agreement, in accordance with THE TERMINATION CLAUSE of this agreement.

COMPLIANCE WITH LAWS: The SERVICE PROVIDER agrees to comply with all laws and regulations applicable to the performance of the work authorized in this Agreement.**ELECTRONIC MAIL:** The SERVICE PROVIDER agrees that it shall maintain and utilize the electronic mail systems in order to communicate with other service providers of the NJSEM and to meet reporting requirements of the NJSEM Executive Director/Administrator's office. The SERVICE PROVIDER agrees that all financial and agenda reports shall be submitted in electronic formats established by the NJSEM State Executive Committee via electronic mail. The SERVICE PROVIDER further agrees that all personnel working under this Agreement shall direct access to the SERVICE PROVIDER's electronic mail system and shall have individual electronic mail addresses.

AFFIRMATIVE ACTION: During the performance of this Agreement, the SERVICE PROVIDER agrees as follows:

The SERVICE PROVIDER, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the SERVICE PROVIDER will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not limited to the following:

employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The SERVICE PROVIDER agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The SERVICE PROVIDER, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the SERVICE PROVIDER, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The SERVICE PROVIDER, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other Agreement or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the SERVICE PROVIDER'S commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The SERVICE PROVIDER where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq. as amended and supplemented from time to time and the Americans with Disabilities Act.

The SERVICE PROVIDER agrees to make good faith efforts to employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2, or a binding determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

The SERVICE PROVIDER agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The SERVICE PROVIDER agrees to revise any of its testing procedures, if necessary, to assure that all personal testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the applicable employment goals, the SERVICE PROVIDER agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The SERVICE PROVIDER shall submit to the NJSEM, after notification of award but prior to execution of a goods and services Agreement, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval
Certificate of Employee Information Report
Employee Information Report Form AA302

The SERVICE PROVIDER shall furnish such reports or other documents to the Division of Agreement Compliance & EEO as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Agreement Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C.17:27.

SERVICE AGREEMENT

Between

The **New Jersey Sustainable Energy Joint Meeting** hereinafter the **NJSEM** and

Perma Risk Management Services, An Affiliate of Conner Strong & Buckelew Companies, LLC hereinafter the **SERVICE PROVIDER**

NOW, THEREFORE, IT IS AGREED by and between the NJSEM and the **SERVICE PROVIDER** as follows:

APPOINTMENT. The SERVICE PROVIDER is hereby appointed and retained as **Executive Director** for the NJSEM to provide the services detailed in the NJSEM's By-Laws, and Joint Contract and in this Agreement. The term of this appointment shall commence on January 1, 2019 and continue until December 31, 2019 (hereinafter **Contract Term**). This appointment was made in accordance with a fair and open process pursuant to N.J.S.A. 19:44A-20.4 et. seq.

STATED OBJECTIVES: To provide the NJSEM with services for the management of the day to day operations of the NJSEM and for the implementation of such policies as may be adopted by the NJSEM.

STANDARD PROVISIONS: Unless otherwise modified in writing, the contract **standard provisions** adopted by the NJSEM and included in Exhibit A attached hereto shall apply to this agreement. The **Standard Provisions** are modified as follows:

INSURANCE: SERVICE PROVIDER shall provide, at its own cost and expense, proof of the following minimum insurance to the NJSEM: Professional Liability Insurance: \$1,000,000/\$1,000,000 aggregate. No other insurance is required.

PAYMENT: Payment shall be made in accordance with the requirements set forth herein under the heading "Compensation".

SERVICE PROVIDER REPRESENTATIVES: The SERVICE PROVIDER's designated representative(s) are Stephen Sacco, Executive Director, Joseph Hrubash, Deputy Executive Director, and Brad Stokes, Deputy Executive Director.

NOTICE: Notices under this Agreement shall be sent to:

Perma Risk Management Services.
9 Campus Drive, Suite 216
Parsippany, NJ 07054
Attn: Stephen Sacco

NJSEM
c/o Perma
9 Campus Drive, Suite 216
Parsippany, NJ 07054
Attn: Executive Director/Administrator

SCOPE OF SERVICES: During the Contract Term, the SERVICE PROVIDER will:

- (a) Provide the services of at least one senior professional satisfactory to the NJSEM's Executive Committee who shall perform all of the duties of Executive Director for the NJSEM as the same are set forth in the Bylaws, applicable statutes, regulations and policies adopted by the NJSEM State Executive Committee. The SERVICE PROVIDER shall also provide all necessary staff support to the Executive Director and Deputy Executive Director.
- (b) Maintain the NJSEM's files, prepare budgets.
- (c) Maintain the NJSEM's general ledger and accounts payable.
- (d) Coordinate the NJSEM's meetings, agendas, minutes, elections, and contracts, as well as maintain the NJSEM's official records and offices.
- (e) Prepare request for proposals for services as deemed by the NJSEM.
- (f) Prepare all filings, if any, required by state regulators.
- (g) Attend all meetings of the NJSEM State Executive Committee.
- (h) Assume overall executive responsibility for the operation of the NJSEM, except that the Executive Director shall not be responsible for the errors and omissions of any other servicing organization except as to generally monitor the compliance of said organization with the directions of the NJSEM State Executive Committee, or performance in accordance with their professional services agreement with the NJSEM, or the applicable statutes and regulations as to the form and timeliness of said undertakings by the contracted professional.
- (i) To professionally perform such other services as may be required by the NJSEM's State Executive Committee, Executive Director, the NJSEM Bylaws, and/or the statutes or regulations pertaining to the NJSEM.

COMPENSATION: During the term of this Agreement, the NJSEM shall pay the SERVICE PROVIDER for general services for the calendar year based upon the current membership/population participating in the NJSEM, a fee of \$0.0002 of the current add on fee of \$0.0015 which equates to 13.33% of the total commission dollars collected by NJSEM for Electric Service Supply and a fee of \$0.0025 of the current add on fee of \$0.020 which equates to 12.50% of the total commission dollars collected by NJSEM for Natural Gas Supply of the revenues paid to the NJSEM as a result of energy procurement auctions or bids or sales ("NJSEM Revenues") not to exceed \$200,000 (Two Hundred Thousand Dollars) total for the Contract Term ("Service Fee").

The SERVICE PROVIDER shall receive a minimum total Service Fee of \$100,000 (One Hundred Thousand Dollars). In the event that the total Service Fee is less than \$100,000 (One Hundred Thousand Dollars), the SERVICE PROVIDER shall bill the NJSEM for the difference.

At each regularly scheduled meeting of the NJSEM's Executive Committee following receipt of the NJSEM Revenues, the NJSEM's Executive Committee shall authorize disbursement of the Service Fee in accordance with this Agreement. Payment of the Service Fee shall be made by the NJSEM within 20 business days following the meeting of the NJSEM's Executive Committee in which said disbursement is authorized. This payment schedule is subject to the Rules and Regulations promulgated by the Department of Community Affairs and any other governing regulatory body.

Furthermore, the SERVICE PROVIDER may petition the NJSEM's Executive Committee for additional compensation if the NJSEM experiences a significant growth in its membership during the term of this Agreement, which results in an increase in the services described in this Agreement.

SPECIAL PROVISIONS RELATING TO COMPENSATION: The compensation or service fee set forth in this Agreement includes the following special provisions:

(a) The fee above includes the following, at not additional cost:

- All administrative staff, including support staff, necessary to perform the duties required hereunder.
- Use of all physical equipment, and there shall be no further charges for rent, light, heat, office equipment or similar items.
- Use of in-house computer services and all software and hardware therefore. In-house computer services and all software and hardware provided by the SERVICE PROVIDER for the NJSEM's use are understood as being, and shall remain the property of the SERVICE PROVIDER. All data and records which pertain to the business and activities of the NJSEM shall, however, be the property of the NJSEM and upon the request of the NJSEM's Executive Committee, Executive Director, the SERVICE PROVIDER shall provide a complete and current copy of all such data and records to the NJSEM's Executive Committee, or Executive Director in either hard copy or on computer tape or disk, or both, as the NJSEM's Executive Committee or Executive Director may specify providing the SERVICE PROVIDER is able to comply with the type of copy request.
- Expenses reasonably incurred in by the SERVICE PROVIDER, including but not limited to photocopies, long distance telephone charges, telefax charges, court costs and other reasonable expenses necessarily incurred in related to the day to day operations of the NJSEM.

(b) SERVICE PROVIDER shall take all reasonable steps necessary to safeguard data files, reports or other information from loss, destruction or erasure. Liability for cost or expense of replacing for damages resulting from the loss of such data shall be borne by the

SERVICE PROVIDER unless, at the time of loss, said data was in the exclusive custody of the NJSEM.

- (c) The SERVICE PROVIDER acknowledges that the NSEM is relying upon the representations made by the SERVICE PROVIDER's skill and judgment in identifying the work which needs to be performed, and the manner and method in which it should be performed. If there are additional services which would normally be required to necessary to achieve the Stated Objectives, the SERVICE PROVIDER shall be obligated to provide them within the compensation stated in this Agreement, even though said services are not specifically referred to in this Agreement.

SPECIAL PROVISIONS – PROFESSIONAL SERVICES CONTRACTS: In addition to the services detailed in the NJSEM's Bylaws and applicable statutes, the following provisions shall apply to this professional services contract:

- (a) The SERVICE PROVIDER's work will be in accordance with the manner, method and techniques normally used by competent professional attorneys in performing the assigned services. All of the SERVICE PROVIDER's work under this Agreement will be in accordance with the standards of its profession and all work performed shall comply with all applicable New Jersey laws and regulations governing the provision of the services set forth in this Agreement.
- (b) The SERVICE PROVIDER represents and warrants that it is competent, knowledgeable and experienced in the type of work to be performed. The SERVICE PROVIDER further represents and warrants that it is familiar with practices in the profession regarding the type of work to be performed under this Agreement and with the laws and regulations which govern the same. The NJSEM has selected the SERVICE PROVIDER based upon the SERVICE PROVIDER's representation of its knowledge and expertise in the area.
- (c) This Agreement is awarded to the SERVICE PROVIDER pursuant to the professional services exception of the Local Public Contracts Law of the State of New Jersey and is subject to compliance with the specific provisions of N.J.S.A. 40A:11-5(a) pertaining to professional service contracts.. The SERVICE PROVIDER will remain, throughout the term of this Agreement authorized to do business in the State of New Jersey. The SERVICE PROVIDER understands that it is unlawful for the NJSEM to make payment for services to any entity, in it is not authorized to do business in the State of New Jersey. A copy of the SERVICE PROVIDER's Business Registration Certificate is attached hereto as Exhibit B.
- (d) Throughout the term of this Agreement, the SERVICE PROVIDER shall maintain all professional licenses required of the SERVICE PROVIDER to render services in the State of New Jersey. A copy of the applicable professional license is attached hereto as Exhibit C.

IN WITNESS WHEREOF, this Agreement has been executed on this _____ day of _____, 2019 for the purposes and the term specified herein.

NJSEM

SERVICE PROVIDER.

Attest:

Exhibit A

STANDARD PROVISIONS Adopted by the NJSEM on April 1, 2010 Revised by the NJSEM on May 19, 2015

Unless otherwise provided, the following provisions shall apply to the SERVICE AGREEMENT between the SERVICE PROVIDER and the NJSEM.

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Workers' Compensation: Statutory plus \$100,000/\$500,000/\$100,000 for employers' liability:

General Liability: \$1,000,000/\$2,000,000 CSL for bodily injury, property damage, and personal injury:

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Professional Liability Insurance: \$1,000,000/\$1,000,000 aggregate:

Bond: If required by the by-laws or pursuant to NJAC 11:15-2 et seq., The SERVICE PROVIDER shall be bonded in a form and amount acceptable to the NJSEM's governing body

Failure by the SERVICE PROVIDER to supply written evidence of these coverages shall result in default. It is required that, wherever possible, the NJSEM be named as an "additional named insured" on any certificate of insurance. The insurance companies for the above coverages must be licensed, solvent and acceptable to the NJSEM. SERVICE PROVIDER shall not take any action to cancel or materially change any of the above insurance required under this Agreement without NJSEM approval. Maintenance of insurance under this section shall not

relieve SERVICE PROVIDER of any liability greater than the insurance coverage.

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determine whether the reasons for the termination can be amicably and reasonably resolved or whether, in its sole determination, the Agreement shall be terminated. The SERVICE PROVIDER may terminate this Agreement, at any time during the term thereof, by the giving of ninety (90) days written notice.

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PAYMENT: Payment shall be made in monthly installments (unless otherwise specified), provided the SERVICE PROVIDER submits a duly authorized voucher at least 10 days prior to the next regularly scheduled meeting of the NJSEM's governing body. Final Payment will be withheld until the vendor's continued service is determined. If the vendor's Agreement will not be renewed or is terminated – final payment will not be made until all provisions of the Agreement have been satisfied.

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may specify providing the SERVICE PROVIDER is able to comply with the type of copy request.

Furthermore, the SERVICE PROVIDER shall take all reasonable steps necessary to safeguard data files, reports or other information from loss, destruction or erasure. Liability for cost or expense of replacing for damages resulting from the loss of such data shall be borne by the SERVICE PROVIDER unless at the time of loss, said data was in the exclusive custody of the NJSEM.

INDEPENDENT CONTRACTOR STATUS: The SERVICE PROVIDER at all times shall be an independent Contractor, and employees of SERVICE PROVIDER shall in no event be considered employees of the NJSEM. No agency relationship between the parties, except as expressly provided for herein, shall exist either as a result of the execution of this Agreement or performance there under.

ENTIRE AGREEMENT: This instrument contains the entire Agreement of the parties hereto and may not be amended, modified, released or discharged, in whole or in part, except by an instrument in writing signed by the parties hereto.

NEW JERSEY LAW: This Agreement shall be governed by, and construed in accordance with, the laws of the State of New Jersey.

BINDING ON SUCCESSORS AND ASSIGNS: Except as otherwise provided herein, all terms, provisions and conditions of this Agreement shall be binding on and inure to the benefit of the parties hereto, their respective personal representatives, successors and assigns.

NO ASSIGNMENT: The SERVICE PROVIDER shall not assign This Agreement without the specific written consent of the NJSEM.

MODIFICATION: No modification of this Agreement shall be valid or binding unless the modification shall be in writing and executed by the NJSEM and the SERVICE PROVIDER.

NO WAIVER: No waiver of any term, provision or condition contained in this Agreement, nor any breach of any such term, provision or condition shall constitute a waiver of any subsequent breach of any such term, provision or condition by either party, or justify or authorize the non-observance on any other occasion of the same or any other term, provision or condition of this Agreement by either party.

PARTIAL INVALIDITY: If any term, provision or condition contained in this Agreement, or the application thereof to any person or circumstances shall, at any time, or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which this Agreement is invalid or unenforceable, shall not be affected thereby, and each term, provision or condition contained in this Agreement shall be valid and enforced to the fullest extent permitted by the law provided, however,

that no such invalidity shall in any way reduce services to be performed by the SERVICE PROVIDER to the NJSEM.

CAPTIONS: The captions or paragraph headings contained in this Agreement are solely for purpose of convenience and shall not be deemed part of this Agreement for the purpose of construing the meaning thereof or for any other purpose.

CONFLICT of INTEREST: This Agreement may be voided by the NJSEM Commissioners if the SERVICE PROVIDER fails to disclose an actual or potential conflict of interest as defined in the NJSEM's Bylaws, or in N.J.S.A. 40A:9-22.1 et. Seq. (the "Local Government Ethics Laws").

PROPRIETARY INFORMATION: The SERVICE PROVIDER shall not reveal to any third party any information that the NJSEM has defined as proprietary without the express written consent of the NJSEM. In addition, the SERVICE PROVIDER shall promptly advise the NJSEM upon being interviewed or retained by a prospective new client operating in the field of energy generation services for public entities or public agencies in the State of New Jersey. Failure to comply with these requirements shall represent cause for termination of this agreement, in accordance with THE TERMINATION CLAUSE of this agreement.

COMPLIANCE WITH LAWS: The SERVICE PROVIDER agrees to comply with all laws and regulations applicable to the performance of the work authorized in this Agreement.**ELECTRONIC MAIL:** The SERVICE PROVIDER agrees that it shall maintain and utilize the electronic mail systems in order to communicate with other service providers of the NJSEM and to meet reporting requirements of the NJSEM Executive Director/Administrator's office. The SERVICE PROVIDER agrees that all financial and agenda reports shall be submitted in electronic formats established by the NJSEM State Executive Committee via electronic mail. The SERVICE PROVIDER further agrees that all personnel working under this Agreement shall direct access to the SERVICE PROVIDER's electronic mail system and shall have individual electronic mail addresses.

AFFIRMATIVE ACTION: During the performance of this Agreement, the SERVICE PROVIDER agrees as follows:

The SERVICE PROVIDER, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the SERVICE PROVIDER will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not limited to the following:

employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The SERVICE PROVIDER agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The SERVICE PROVIDER, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the SERVICE PROVIDER, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The SERVICE PROVIDER, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other Agreement or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the SERVICE PROVIDER'S commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The SERVICE PROVIDER where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq. as amended and supplemented from time to time and the Americans with Disabilities Act.

The SERVICE PROVIDER agrees to make good faith efforts to employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2, or a binding determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

The SERVICE PROVIDER agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The SERVICE PROVIDER agrees to revise any of its testing procedures, if necessary, to assure that all personal testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the applicable employment goals, the SERVICE PROVIDER agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The SERVICE PROVIDER shall submit to the NJSEM, after notification of award but prior to execution of a goods and services Agreement, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval
Certificate of Employee Information Report
Employee Information Report Form AA302

The SERVICE PROVIDER shall furnish such reports or other documents to the Division of Agreement Compliance & EEO as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Agreement Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C.17:27.

EMPLOYMENT AGREEMENT

Between

The New Jersey Sustainable Energy Joint Meeting hereinafter the **TREASURER** and
William Garofalo hereinafter the **TREASURER**;

NOW, THEREFORE, IT IS AGREED by and between the **NJSEM** and the **TREASURER** as follows:

APPOINTMENT. William Garofalo is hereby appointed and employed as **Treasurer** for the NJSEM to provide the services detailed in the NJSEM's By-Laws, Joint Contract and in this Agreement. The term of this appointment and employment shall commence on January 1, 2019 and continue until December 31, 2019. This appointment was made in accordance with a fair and open process pursuant to N.J.S.A. 19:44A-20.4 et. seq.

NOTICE: Notices under this Agreement shall be sent to:

William Garofalo
7 Centre Street
Ocean Township, NJ 07712

NJ SEM
c/o PERMA
9 Campus Drive, Suite 216
Parsippany, NJ 07054
Attn: Executive Director/Administrator

STANDARD PROVISIONS: None of NJSEM's **Standard Provisions** applicable to all contracts shall apply to this Employment Agreement.

COMPENSATION: For the services covered by this Agreement, the NJSEM shall pay to the TREASURER a total fee of \$4,245 (Four Thousand Two Hundred Forty Five Dollars) payable in monthly installments.

At each regularly scheduled meeting of the NJSEM's Executive Committee shall authorize disbursement of said monies in accordance with this Agreement. Payment of the fee shall be made by the NJSEM within 20 business days following the meeting of the NJSEM's Executive Committee in which payment is authorized. This payment schedule is subject to the Rules and Regulations promulgated by the Department of Community Affairs and any other governing regulatory body.

Furthermore, the TREASURER may petition the NJSEM's Executive Committee for additional compensation if the NJSEM experiences a significant growth in its membership during the term of this Agreement, which results in an increase in the services described in this Agreement.

SPECIAL PROVISIONS RELATING TO COMPENSATION: The compensation or service fee set forth in this Agreement includes the following special provisions:

(a) The fee above includes the following, at not additional cost:

- All administrative staff, including support staff, necessary to perform the duties required hereunder.
- Use of all physical equipment, and there shall be no further charges for rent, light, heat, office equipment or similar items.
- Use of in-house computer services and all software and hardware therefore. In-house computer services and all software and hardware provided by the TREASURER for the NJSEM's use are understood as being, and shall remain the property of the TREASURER. All data and records which pertain to the business and activities of the NJSEM shall, however, be the property of the NJSEM and upon the request of the NJSEM's Executive Committee, Executive Director, the TREASURER shall provide a complete and current copy of all such data and records to the NJSEM's Executive Committee, or Executive Director in either hard copy or on computer tape or disk, or both, as the NJSEM's Executive Committee or Executive Director may specify providing the TREASURER is able to comply with the type of copy request.
- Expenses reasonably incurred in by the TREASURER, including but not limited to photocopies, long distance telephone charges, telefax charges, court costs and other reasonable expenses necessarily incurred in related to the day to day operations of the NJSEM.

(b) TREASURER shall take all reasonable steps necessary to safeguard data files, reports or other information from loss, destruction or erasure. Liability for cost or expense of replacing for damages resulting from the loss of such data shall be borne by the TREASURER unless, at the time of loss, said data was in the exclusive custody of the NJSEM.

(c) The TREASURER acknowledges that the NSEM is relying upon the representations made by the TREASURER's skill and judgment in identifying the work which needs to be performed, and the manner and method in which it should be performed. If there are additional services which would be normal and incidental to services generally provided by a treasurer, the TREASURER shall be obligated to provide them within the compensation stated in this Agreement, even though said services are not specifically referred to in this Agreement.

SERVICES: In addition to services detailed in the NJSEM's By-laws, and N.J.S.A. 40A:65-14 *etc. seq.*, the TREASURER will provide the following services:

- a) Deposit all receipts in bank accounts within 48 hours of receiving same.

- b) Review all expense payment vouchers, checks and receipts prior to presentation of the bills' list to the NJSEM State Executive Committee.
- c) Sign and distribute all expense payment checks.
- d) Reconcile all checking and investment accounts prior to submittal of monthly reports to the NJSEM State Executive Committee and Executive Director.
- e) Submit a monthly report of cash and investment activity to the NJSEM State Executive Committee in a format acceptable to it.
- f) Assist the Executive Director's office in the preparation of the general ledger by supplying a report of cash and investment activity for a month at least one week prior to a subsequent month's NJSEM State Executive Committee meeting. Such report of cash and investment activity shall be in a format specified by the Executive Director. The report shall be supplemented by:
 - 1. Checking and investment account reconciliations for the period.
 - 2. Copies of all bank and investment account statements for the period.
- g) Review the monthly general ledger, trial balance, and financial fast track reports to assure that they are consistent with treasurer's cash and investment records.
- h) Assist the Executive Director in the preparation of the annual operating budget.
- i) Oversee and implement the NJSEM's cash and investment management plan.
- j) Assure that all treasurer records are available for review by NJSEM's Auditor and any outside auditors within 30 days of June 30 and December 31 period ends.
- k) Submit plans to the Executive Director for correction of audit comments and recommendations dealing with functions relating to this scope of service.
- l) Implement corrective action plans adopted by the NJSEM State Executive Committee for audit comments and recommendations.
- m) Attend NJSEM State Executive Committee meetings and/or other meetings as may be deemed necessary to effectuate the scope of services.
- n) Perform other duties or services as requested/required by the NJSEM's State Executive Committee, Executive Director, the NJSEM Bylaws, and/or the statutes or regulations pertaining to the NJSEM.

IN WITNESS WHEREOF, this Agreement has been executed on this _____ day of _____, 2019 for the purposes and the term specified herein.

NJ NJSEM

TREASURER

Attest:

Exhibit A

STANDARD PROVISIONS Adopted by the NJSEM on April 1, 2010 Revised by the NJSEM on May 19, 2015

Unless otherwise provided, the following provisions shall apply to the SERVICE AGREEMENT between the SERVICE PROVIDER and the NJSEM.

INDEMNIFICATION AND HOLD HARMLESS: SERVICE PROVIDER shall indemnify, defend and hold the NJSEM, its Commissioners, appointed officials and member municipalities harmless from any and all claims or liabilities arising out of the activities of the SERVICE PROVIDER, its employees and agents in connection with all activities undertaken by the SERVICE PROVIDER, pursuant to this Agreement. It is the intention of the parties that any claim for relief of any type being asserted against the NJSEM, its Commissioners, appointed officials and member municipalities, based upon any act or omission of the SERVICE PROVIDER, its affiliates and successors, shall be the responsibility of the SERVICE PROVIDER, and the SERVICE PROVIDER shall hold the NJSEM harmless from same.

INSURANCE: SERVICE PROVIDER shall provide, at its own cost and expense, proof of the following minimum insurance to the NJSEM:

Workers' Compensation: Statutory plus \$100,000/\$500,000/\$100,000 for employers' liability:

General Liability: \$1,000,000/\$2,000,000 CSL for bodily injury, property damage, and personal injury:

Automobile Liability: \$1,000,000 CSL covering all owned/non-owned, and hired automobiles:

Professional Liability Insurance: \$1,000,000/\$1,000,000 aggregate:

Bond: If required by the by-laws or pursuant to NJAC 11:15-2 et seq., The SERVICE PROVIDER shall be bonded in a form and amount acceptable to the NJSEM's governing body

Failure by the SERVICE PROVIDER to supply written evidence of these coverages shall result in default. It is required that, wherever possible, the NJSEM be named as an "additional named insured" on any certificate of insurance. The insurance companies for the above coverages must be licensed, solvent and acceptable to the NJSEM. SERVICE PROVIDER shall not take any action to cancel or materially change any of the above insurance required under this Agreement without NJSEM approval. Maintenance of insurance under this section shall not

relieve SERVICE PROVIDER of any liability greater than the insurance coverage.

POLITICAL CONTRIBUTIONS: Compliance with the New Jersey Campaign Contributions and Expenditures Reporting Act. N.J.S.A. 19:44A-1 et seq. shall be a material term and condition of this Agreement and shall be binding upon the parties hereto upon execution of this Agreement. The following provision only applies to the SERVICE PROVIDER if the appointment was not made pursuant to a fair and open process in accordance with N.J.S.A. 19:44A-20.4 et seq. By acceptance of this Agreement, the SERVICE PROVIDER certifies that in the one year period preceding the date that this Agreement is legally authorized that neither the SERVICE PROVIDER business entity nor any persons holding 10% or more of the issued and outstanding stock of the SERVICE PROVIDER business entity or entitled to receive the benefit of 10% or more of the revenues and/or profits of the SERVICE PROVIDER business entity have made any reportable contributions pursuant to N.J.S.A. 19:44A-1 et seq. that, pursuant to P.L. 2004, c.19 would bar the award of this Agreement. This includes any reportable contribution to any official, candidate, joint candidates committee or political party representing elected officials or candidates as defined pursuant to N.J.S.A. 19:44A-3(p), (q) and (r) of any member local unit of the NJSEM. Further, the SERVICE PROVIDER and all persons holding 10% or more of the issued and outstanding stock of the SERVICE PROVIDER business entity or entitled to receive the benefit of 10% or more of the revenues and/or profits of the SERVICE PROVIDER business entity shall not make such contributions during the period of this Agreement. It shall be a breach of this contract for the SERVICE PROVIDER business entity nor any persons holding 10% or more of the issued and outstanding stock of the SERVICE PROVIDER business entity or entitled to receive the benefit of 10% or more of the revenues and/or profits of the SERVICE PROVIDER business entity to engage in any of the prohibited acts set forth in N.J.S.A. 19:44A-20.21 and NJSEM shall be entitled to immediately terminate the Agreement without notice.

AGREEMENT TERMINATION: The NJSEM may terminate this Agreement, at any time during the term thereof by the giving of ninety (90) days written notice, setting forth the cause or causes for termination to the SERVICE PROVIDER. The SERVICE PROVIDER shall have the opportunity for a hearing before the NJSEM's State Executive Committee. The NJSEM's State Executive Committee shall

determine whether the reasons for the termination can be amicably and reasonably resolved or whether, in its sole determination, the Agreement shall be terminated. The SERVICE PROVIDER may terminate this Agreement, at any time during the term thereof, by the giving of ninety (90) days written notice.

OWNERSHIP OF RECORDS: All records and data of any kind relating to the NJSEM shall belong to the NJSEM, and shall be surrendered to the NJSEM upon expiration or termination of this Agreement. At all times during the term of this Agreement and for a period of five (5) years, from the NJSEM, its appointed officials and other designated representatives, as authorized by the NJSEM, shall have access to records and files maintained by the SERVICE PROVIDER for the NJSEM during normal business hours. Furthermore, such records, books, and files relating to the operation and business of the NJSEM are the property of the NJSEM, regardless of site stored. Information released to the SERVICE PROVIDER by the NJSEM for the purpose of performing the services as outlined herein shall be used only in connection with the performance of said duties. In addition, Records must be made available to the state office of comptroller and any auditor of the NJSEM upon request.

PAYMENT: Payment shall be made in monthly installments (unless otherwise specified), provided the SERVICE PROVIDER submits a duly authorized voucher at least 10 days prior to the next regularly scheduled meeting of the NJSEM's governing body. Final Payment will be withheld until the vendor's continued service is determined. If the vendor's Agreement will not be renewed or is terminated – final payment will not be made until all provisions of the Agreement have been satisfied.

This payment schedule is subject to any rules and regulations promulgated by the Department of Banking & Insurance and the Department of Community Affairs.

SPECIAL PROVISIONS RELATING TO COMPENSATION. The compensation or service fee set forth in this Agreement includes:

All administrative staff, including support staff, necessary to perform the work required of the SERVICE PROVIDER.

Use of all physical equipment, and there shall be no further charges for rent, light, heat, office equipment or similar items.

In-house computer services including all software and hardware provided by the SERVICE PROVIDER for the NJSEM's use, it being understood that the software and hardware is and shall remain the property of the SERVICE PROVIDER. All data and records which pertain to the business and activities of the NJSEM shall be the property of the NJSEM and upon the request of the NJSEM's Executive Committee or Executive Director/Administrator the SERVICE PROVIDER shall provide a complete and current copy of all such data and records to the NJSEM's Executive Committee or Executive Director/Administrator in either hard copy or on computer tape or disk or both as the NJSEM's Executive Committee or Executive Director/Administrator

may specify providing the SERVICE PROVIDER is able to comply with the type of copy request.

Furthermore, the SERVICE PROVIDER shall take all reasonable steps necessary to safeguard data files, reports or other information from loss, destruction or erasure. Liability for cost or expense of replacing for damages resulting from the loss of such data shall be borne by the SERVICE PROVIDER unless at the time of loss, said data was in the exclusive custody of the NJSEM.

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NO WAIVER: No waiver of any term, provision or condition contained in this Agreement, nor any breach of any such term, provision or condition shall constitute a waiver of any subsequent breach of any such term, provision or condition by either party, or justify or authorize the non-observance on any other occasion of the same or any other term, provision or condition of this Agreement by either party.

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gender identity or expression, disability, nationality or sex. Such action shall include, but not limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The SERVICE PROVIDER agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

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The SERVICE PROVIDER, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other Agreement or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the SERVICE PROVIDER'S commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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The SERVICE PROVIDER shall furnish such reports or other documents to the Division of Agreement Compliance & EEO as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Agreement Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C.17:27.