

SERVICE DATE
Dec 29, 2014

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Public Service Commission of Wisconsin
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PUBLIC SERVICE COMMISSION OF WISCONSIN

2015-2018 Contract for Services Between Statewide Energy Efficiency
and Renewables Administration and Chicago Bridge and Iron

9501-FE-120

FINAL DECISION

This is the Order for the statewide energy efficiency and renewable resource program's (Focus on Energy (Focus)) contract for services between the Statewide Energy Efficiency and Renewables Administration (SEERA) and Chicago Bridge and Iron (CB&I) for the 2015-2018 contract period (Agreement).

Background

Wisconsin Stat. § 196.374(3)(c)1. requires the Commission to approve any contract between the utilities and the program administrator. The energy utilities created a legal entity, SEERA, to fulfill their Focus-related obligations, including the negotiation of agreements with the program administrator. Upon completion of the second quadrennial planning process, SEERA elected to extend CB&I's contract as the Focus program administrator, and CB&I agreed to the extension on September 15, 2014. SEERA and CB&I agreed on compensation for the 2015-2018 period on October 30, 2014. Following the agreement on compensation, the parties began negotiating certain modifications and clarifications to the contract. The Commission considered the parties' progress and proposed terms and conditions at its closed meeting on December 12, 2014. The Commission approved the contract as then drafted and delegated the authority to monitor the completion of negotiations and to approve any subsequent changes to Commissioner Nowak. On December 23, 2014, the parties executed the completed

Docket 9501-FE-120

the contract (Agreement). A copy of the executed agreement is attached as Appendix A. The Agreement is APPROVED.

Findings of Fact

1. The Agreement between SEERA and CB&I for the 2015-2018 contract period is reasonable and in the public interest.

Conclusions of Law

1. The Commission has jurisdiction under Wis. Stat. § 196.374(3)(c)1. and Wis. Admin. Code ch. PSC 137 to approve the Agreement between SEERA and CB&I for the 2015-2018 contract period.

Discussion

Pursuant to Wis. Stat. § 196.374(3)(f), the Commission promulgated rules establishing procedures and criteria for Commission review of contracts between the utilities and the administrator of Focus. Wisconsin Admin. Code § PSC 137.04(1)(b) provides:

- (b) The contract shall include the following:
1. A requirement that the statewide program shall comply with the policies and goals issued by the Commission;
 2. A requirement that the statewide programs shall comply with PSC 137.05;
 3. Performance indicators and minimum performance standards;
 4. Any other provisions the Commission may require.

The Agreement as proposed meets the first three requirements. Section 4.0, Standards of Performance in the Main Agreement, directly obligates CB&I to follow Commission policies.

Section 4.1 provides, in part:

The Program Administrator shall perform the Work consistent with the requirements established in this Agreement, any and all applicable professional standards, and to the reasonable satisfaction of the Contract Administrator and the Commission. Unless otherwise directed or permitted by the Contract Administrator and the Commission, the Program Administrator shall perform the

required Work consistent with this Agreement, and in compliance with the goals, purposes and priorities of Wis. Stat. § 196.374(2)(a)2 and (3)(b)1.

Section 4.2 further requires CB&I to comply with Wis. Admin. Code § PSC 137.05. This rule establishes the minimum requirements of the Focus programs. The incorporated attachments also impose detailed obligations upon CB&I which are derived, in large part, from Wis. Admin. Code § PSC 137.05, Wis. Stat. § 196.374, and the Commission's second Quadrennial Plan for Focus. ([PSC REF#: 215245.](#)) Attachment D, *Compensation, Payment and Performance Bonus*, and Attachment E, *2015-2018 Net Annual and Verified Gross Lifecycle Goals*, include detailed performance indicators and minimum performance standards for the quadrennium.

The Agreement will help to ensure the continued operation of Focus in a professional and cost effective manner, providing appropriate benchmarks for success and incentives to achieve that success during the next quadrennium. The Agreement is APPROVED.

Order

1. The Commission approves the contract for services between the utilities and the Focus program administrator for the 2015-2018 contract period as shown in Appendix A.

Dated at Madison, Wisconsin, this 29th day of December, 2014.

By the Commission:



Sandra J. Paske
Secretary to the Commission

SJP:JJR:JAS:jlt:DL: 00952321

See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN
610 North Whitney Way
P.O. Box 7854
Madison, Wisconsin 53707-7854

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. If there is no date on the first page, the date of service is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission serves its original decision.¹ The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: March 27, 2013

¹ See *State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

AMENDED AND RESTATED CONTRACT FOR SERVICES

Whereas, the Statewide Energy Efficiency and Renewables Administration, Inc. and Shaw Environmental & Infrastructure, Inc. (n/k/a CB&I Government Solutions, Inc.) entered into a Contract for Services which was effective May 9, 2011 (as previously amended, the “Original Contract”); and

Whereas, the parties hereto wish to amend and restate the Original Contract through entering into this Agreement, which is intended to govern the performance of the Work by the Program Administrator during the period from January 1, 2015 through December 31, 2018, and the other topics addressed herein, all subject to the terms and conditions contained herein. The terms and conditions of the Original Contract, however, shall govern all obligations for the period prior to January 1, 2015, including but not limited to bonus payments and budgets.

Now, therefore, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree to amend and restate the Original Contract by entering into this Agreement, as follows:

1.0 Parties

This Amended and Restated Contract for Services is entered into by and between the Statewide Energy Efficiency and Renewables Administration, Inc., a non-stock corporation organized under Wisconsin law, hereinafter called the Contract Administrator, and CB&I Government Solutions, Inc., a corporation organized under Louisiana law, hereinafter called the Program Administrator, for the contract period from May 9, 2011 through December 31, 2018. In consideration of the mutual promises and agreements hereinafter set forth, the parties agree as follows:

2.0 Definitions

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

- A. “Agreement” means this Amended and Restated Contract for Services and all Attachments hereto, as all may be amended from time to time. The main body of the Agreement, excluding its Attachments, is referred to herein as the “Main Agreement”.
- B. “Business Portfolio” means a portfolio of Program offerings designed to serve a particular non-residential Sector. Business Portfolio Programs may target industrial, commercial, agricultural, schools, local government, and non-local government customers.
- C. “Chapter PSC 137” means Wis. Admin. Code ch. PSC 137.

- D. “Commission” means the Public Service Commission of Wisconsin. The Commission may delegate tasks to Commission staff as needed.
- E. “Compliance Agent” means the Contractor that performs compliance audits to ensure Program Contractors comply with the Policy Manual as well as contractual requirements specified in their individual contracts.
- F. “Confidential Information” means (1) program participant-specific information and databases comprised of such information, and (2) any information provided or made available by one party (a “disclosing party”) to the other party (a “receiving party”) that (a) is marked as proprietary or confidential at the time of disclosure; or (b) is orally identified as being confidential at the time of disclosure, followed by written confirmation of confidentiality within 30 days of such verbal identification; or (c) the receiving party knew or should have known, under the circumstances, was considered confidential or proprietary by the disclosing party.
- G. “Contract Administrator” means the Statewide Energy Efficiency and Renewables Administration, Inc. (“SEERA”), which is the legal entity (non-profit) formed by the Energy Utilities to fulfill their obligations under Wis. Stat. § 196.374(2)(a). The SEERA creates and funds statewide energy efficiency and renewable energy Programs. The SEERA also contracts, on the basis of competitive bids, with one or more organizations to administer Focus on Energy.
- H. “Contractors”, where capitalized, refers to organizations contracted directly with the SEERA or the Commission in connection with Focus on Energy. These organizations include, but are not limited to, the Program Administrator, Fiscal Agent, Evaluator, and the Compliance Agent.
- I. “Customer” or “customer”, unless the context requires otherwise, means a Utility customer that is eligible to participate in one or more Focus on Energy Programs.
- J. “Effective Date” means the date on which this Agreement is signed by an authorized representative of each party.
- K. “Eligible Costs” means those costs which can be audited and which are directly attributable to contracted activities and allowable pursuant to the Policy Manual.
- L. “Energy Utility” means an investor-owned electric and/or natural gas utility.
- M. “Environmental and Economic Research and Development Program” means the initiatives for research and development regarding the environmental and economic impacts of energy use in Wisconsin, under Wis. Stat. Section 196.374(2)(a)2.d.
- N. “Evaluation Workgroup” means the body convened by the Commission during the first quadrennial planning process to advise the Commission on measurement and evaluation issues. This five-person group consists of a Commission staff

person who chairs the group; and one member each of the evaluation contract team, the Program Administrator, the Utilities and an outside expert.

- O. “Evaluator” means the independent third party Contractor hired by the Commission to evaluate the performance of all Programs administered by the Program Administrator pursuant to this Agreement.
- P. “Fiscal Agent” means the Contractor that receives, distributes, and accounts for statewide energy efficiency and renewable resource Program funds under Act 141.
- Q. “Focus on Energy” means the statewide energy efficiency and renewable energy programs specified under Wis. Stat. s. 196.374(2)(a).
- R. “Free-ridership” or “free-ridership” means the frequency by which Program participants receive Program Incentives for purchases they would still have made in the absence of those Incentives. Free-ridership in Focus on Energy is estimated through evaluation methods that include, but are not limited to, surveys of Program participants regarding their purchasing decisions and Standard Market Practice methods which track the installation of efficient products by Program non-participants.
- S. “Implementer” (sometimes referred to as “Program Implementer”) means an organization contracting with the Program Administrator to implement Focus on Energy Programs; Implementers do not include Subcontractors, as that term is defined below. Implementers shall receive funding directly from the Contract Administrator for services provided by them in implementing Focus on Energy Programs.
- T. “Incentive” means a payment provided by Focus on Energy to a customer or trade ally that reduces the cost of an energy efficiency or renewable energy measure. The term “Incentive” does not, however, include technical assistance or in-kind services.
- U. “Local Units of Government” means, according to Wis. Stat. § 23.24(4)(a)1, a “Local governmental unit”, which is a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of the political subdivision or special purpose district, or combination or subunit of any of the foregoing. This includes cities, villages, towns, counties, school districts, and technical college districts. This definition was published in the 2009-2010 Bill Drafting Manual published by the Wisconsin Legislative Reference Bureau.
- V. “Municipal Electric Utility” means an electric utility that is owned wholly by a municipality and that owns a retail distribution system.
- W. “Policy Manual” means the manual developed by the Fiscal Agent and the Compliance Agent, and approved by the Commission, which provides rules, regulations and policies of the Focus on Energy Program to be followed by the

Program Administrator and its Subcontractors and Implementers. No amendment to the Policy Manual shall be effective unless and until it has been approved by the Commission.

- X. “Program” means a program for reducing the usage or increasing the efficiency of the usage of energy, or displacing energy usage, by a customer or member of a participating Energy Utility, Municipal Electric Utility, or Retail Electric Cooperative. Programs may target specific customer types, customer sectors, or technologies.
- Y. “Program Administrator” means CB&I Government Solutions, Inc., which is the Contractor hired by the SEERA to administer the Focus on Energy Programs.
- Z. “Program Contractors” means, collectively, the Contractors, Subcontractors and Implementers.
- AA. “Program Income” means gross receipts received by the Program Administrator which are directly generated from the Work detailed in this Agreement, including but not limited to repayments of funds that had been previously provided to eligible beneficiaries; interest earned on any or all Agreement funds obtained from the Fiscal Agent; and interest earned on Program Income pending its disposition.
- BB. “Research Portfolio” means a portfolio of Program offerings and initiatives oriented to further research activities in the State of Wisconsin. This portfolio includes the Environmental and Economic Research and Development (EERD) Program.
- CC. “Residential Portfolio” means a portfolio of Program offerings for residential customers.
- DD. “Retail Electric Cooperative” (or “CO-OP”) means a cooperative association that is organized under ch. 185 of the Wisconsin Statutes for the purpose of providing electricity at retail to its members only and that owns or operates a retail electric distribution system.
- EE. “Sector” means a group of customers that provide similar goods and services. Utilizing Sectors allows targeting of specific Focus on Energy Incentive offerings and measures. Sectors served by Focus on Energy include: industrial, commercial, agricultural, schools, local government, non-local-government, and residential.
- FF. “Sensitive Information” means non-public information about a Focus on Energy customer. Sensitive Information includes, but is not limited to: Social Security numbers; utility account numbers; tax identification numbers; energy usage information; property owner name and address; confidential project-specific information; confidential business documents; and project costs.

GG. “SPECTRUM” (State Program for Energy Customer Tracking, Resource Utilization and data Management) is a comprehensive customer relationship management (CRM)-based data management system that serves as the center for the major functional components of Focus on Energy. SPECTRUM tracks and manages:

- Customer service and relations
- Customer, property, and utility information
- Energy efficiency and renewable energy applications
- Incentive applications, payments and processing
- Measures of energy savings
- Program/Implementer budgets and expenditures
- Subcontractor/Implementer invoicing, budgeting, approval, and payment

HH. “Subcontractors” means, where capitalized, the organizations contracted with a Contractor in connection with Focus on Energy, but specifically excluding Implementers. These Subcontractors include, but are not limited to, outside legal counsel and marketing firms. Subcontractors who enter into agreements and/or purchase orders with the Program Administrator in connection with Focus on Energy will be directly compensated by Program Administrator pursuant to such agreements and/or purchase orders.

II. “Third Party” means an individual or organization that is not a Program Contractor and is not privy to Sensitive Information without consent from the Commission.

JJ. “Trade Ally” or “trade ally” means a contractor or service provider that works with Focus on Energy to deliver energy efficiency and/or renewable energy products and expertise to Customers.

KK. “Utilities” means the Energy Utilities, Retail Electric Cooperatives, and Municipal Electric Utilities that provide energy to customers in the State of Wisconsin.

LL. “Work” means the functions, duties, and activities to be performed by the Program Administrator set forth in this Main Agreement or identified in the Attachments hereto.

3.0 Scope of Work

3.1 The Program Administrator shall furnish all necessary personnel, labor, office space, equipment, materials, services, licenses, transportation, and other necessary resources (except as is otherwise provided herein) to accomplish the Work set forth in this Main Agreement and the Work as set forth in Attachment A – Scope of Work - Management and Operations, Attachment B – Scope of Work - Business Portfolio, Attachment C – Scope of Work - Residential Portfolio,

Attachment D - Compensation, Payment, and Performance Bonus, and Attachment E – 2015-2018 Net Annual and Verified Gross Lifecycle Goals. Changes to the Work may be made only by written amendment to this Agreement, signed by both the Contract Administrator and the Program Administrator and approved by the Commission. The Program Administrator has established and will maintain, during the term of this Agreement, an office in the Madison, Wisconsin area.

4.0 Standards of Performance

- 4.1 The Program Administrator shall perform the Work consistent with the requirements established in this Agreement, any and all applicable professional standards, and to the reasonable satisfaction of the Contract Administrator and the Commission. Unless otherwise directed or permitted by the Contract Administrator and the Commission, the Program Administrator shall perform the required Work consistent with this Agreement, and in compliance with the goals, purposes and priorities of Wis. Stat. § 196.374(2)(a)2 and (3)(b)1.
- 4.2 For the entire term of this Agreement, the Program Administrator shall coordinate its performance of the Work across the Business Portfolio and Residential Portfolio of Programs. The statewide Programs administered by the Program Administrator shall comply with Wis. Admin. Code § PSC 137.05.
- 4.3 Program Administrator shall cause all arrangements and agreements with Sub-contractors (including without limitation agents) utilized by Program Administrator pursuant to this Agreement to include protections for the benefit of the Program Administrator, the Contract Administrator and the Commission substantially the same as those afforded to Contract Administrator and the Commission under or in connection with this Agreement, including without limitation provisions related to confidentiality of information.

5.0 Funds Payable to the Program Administrator

- 5.1 Professional Fee. In consideration of the services and other Work to be performed by the Program Administrator, the Commission shall authorize the Program Administrator to receive payments for satisfactory performance of the Work in accordance with the payment provisions specified in Attachment D hereto.
- 5.2 Program Funds. The Program Administrator shall administer the funds that utilities are required to collect from their customers pursuant to Wis. Stat. § 196.374(3)(b)2. The estimated amount of these funds for each year of the term of this Agreement, and the anticipated allocation of those funds to programs, are set forth in Attachment D. The Program Administrator shall not expend or authorize the expenditure of any amount in any year in excess of the Program Administrator's Commission-approved budget for that year, except as authorized in advance in writing by the Contract Administrator and the Commission. In the event that the Program Administrator spends in one year less than its

Commission-approved budget for that year, the amount of the excess will be taken into account in the budgeting process for the following year.

- 5.3 Notwithstanding any of its other provisions, this Agreement shall impose no liabilities or obligations on the Contract Administrator or its members or affiliates to contribute any amounts or make any payments for Focus on Energy programs that are in excess of the requirements currently set forth in Wis. Stat. § 196.374(3)(b)2 or as modified by law. Program Administrator acknowledges that it bears the risk of curtailment, suspension or reduction in Focus on Energy funding, and that it shall be responsible, in its discretion, for including substantially similar and consistent curtailment, suspension and reduction provisions in its agreements with Subcontractors and Implementers related to this Agreement. Any curtailment, suspension or reduction in the Work will not affect payment for Work performed prior to the notice of curtailment, suspension or reduction in the Work.

6.0 Term of Agreement

- 6.1 The initial term of this Agreement began in May 2011 and shall end on December 31, 2018, unless amended or terminated earlier in accordance with the provisions of this Agreement.
- 6.2 The Contract Administrator, in its discretion and subject to Commission approval, may propose to extend this Agreement for up to forty-eight (48) additional months after the end of the initial term by giving written notice thereof to the Program Administrator by May 31, 2018, which notice shall specify the length of the proposed extension and the proposed compensation for the Work to be performed during the extended term. The Program Administrator shall provide a written response to the Contract Administrator's proposal to extend the term of this Agreement, either by accepting or rejecting the proposal, or accepting subject to the parties reaching agreement on compensation, by July 15, 2018. The Program Administrator's failure to respond by July 15, 2018, shall be deemed a rejection of the proposal to extend the Agreement's term. If the Program Administrator accepts the proposal subject to the parties reaching agreement on compensation, compensation for the Work to be provided pursuant to any extension of the term of this Agreement must be agreed upon in writing between the Contract Administrator and the Program Administrator by August 15, 2018, pending Commission approval, or the proposal to extend shall be deemed rejected.
- 6.3 If the Contract Administrator or the Program Administrator chooses not to extend this Agreement per Paragraph 6.2, or the Contract Administrator and the Program Administrator are unable to agree in writing as to the compensation for the Work to be performed during the extended term by August 15, 2018, or the Commission does not approve the extension by October 1, 2018, then this Agreement shall expire on December 31, 2018.

7.0 Prior Approvals

7.1 Neither this Agreement, nor any amendment to it, is binding on either party unless and until it has been approved by the Commission.

8.0 Amendment

8.1 No changes, modifications, amendments or extensions in the terms or conditions of this Agreement shall be effective unless reduced to writing and signed by the duly authorized representatives of the Contract Administrator and the Program Administrator and approved by the Commission.

9.0 Termination of Agreement

9.1 Termination at Will

9.1.1. The Contract Administrator may, subject to Commission approval, terminate this Agreement at any time upon sixty (60) days' advance written notice to the Program Administrator. Upon any such termination, the Contract Administrator's liability to the Program Administrator shall be limited to the undisputed, actual costs incurred by the Program Administrator in carrying out the Work prior to the date of the termination plus any reasonable termination expenses. Termination expenses for which reimbursement may be appropriate are those expenses having prior written approval of the Contract Administrator, subject to Commission approval, and may include reasonable and necessary expenses relating to concluding outstanding obligations under the Agreement such as completing administrative duties, informing and coordinating with Subcontractors and Implementers, compiling and transferring Incentive check run data and expense information to the Fiscal Agent, working with the Commission to facilitate transition of Program obligations, information, intellectual property and proprietary material, and equipment and materials purchased with funds provided under this Agreement. Reimbursable termination expenses shall not include, without limitation, legal fees, costs or expenses incurred in disputing or litigating any claims arising from or relating to this Agreement or its termination or any alleged breach of the Agreement. The Program Administrator may request, in writing, to terminate this Agreement. At its discretion, the Contract Administrator may approve any such termination request. If the termination request is approved, the Contract Administrator and the Program Administrator shall mutually agree upon the termination date. In this situation, however, the termination and the effective date of termination shall be subject to Commission approval.

9.2 Termination for Cause

9.2.1. The Contract Administrator may, subject to Commission approval, terminate this Agreement if, through any cause, the Program

Administrator fails to fulfill its obligations hereunder in a timely and proper manner, or violates any of the provisions of this Agreement. The Contract Administrator shall give the Program Administrator thirty (30) days' written notice of its intent to terminate under this provision (provided that if the basis for the notice is a material or repeated failure or breach, Contract Administrator may terminate upon written notice). The Contract Administrator shall in any such written notice identify the grounds for proposed termination and grant the Program Administrator a reasonable opportunity to respond which shall not be less than five (5) business days (provided that if the proposed termination is based on a material or repeated failure or breach, the Contract Administrator shall not be required to allow a right to respond). Upon termination under this provision, the Contract Administrator's liability to the Program Administrator shall be limited to any undisputed, actual costs the Program Administrator has incurred in carrying out the Work as of the date of termination.

- 9.2.2. The Contract Administrator may, subject to Commission approval, terminate this Agreement immediately upon thirty (30) days' written notice to the Program Administrator if (a) a Change in Control occurs with respect to the Program Administrator without the prior written consent of the Contract Administrator; or (b) the Program Administrator attempts to assign or transfer this Agreement or any of its rights or obligations under this Agreement to any person or entity without the prior written consent of the Contract Administrator (it being understood that the Program Administrator shall not assign or transfer any of its rights or obligations under this Agreement, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of the Contract Administrator, and that any such purported assignment or transfer without such prior written consent shall be void and of no effect); or (c) the Program Administrator files a petition in bankruptcy, or files a petition or otherwise seeks relief under or pursuant to any bankruptcy, insolvency, or reorganization statute or proceeding, or an involuntary petition in bankruptcy is filed against the Program Administrator, or the Program Administrator becomes insolvent or makes an assignment for the benefit of its creditors, or a custodian, receiver, or trustee is appointed for all or a substantial portion of its business or assets. The term "Change in Control" as used in this Agreement means (i) in one or a series of transactions, the sale of a majority of the issued and outstanding shares of voting stock of the Program Administrator; (ii) the reorganization, merger or consolidation of the Program Administrator with or into another entity, unless immediately following such business combination all or substantially all of the individuals and entities who were the beneficial owners of the voting stock of the Program Administrator immediately prior to such business combination beneficially own, directly or indirectly, a majority of the issued and outstanding shares of voting stock of the Program Administrator; (iii) in one or a series of transactions, the sale or

transfer of all or substantially all of the assets of the Program Administrator, or of all or substantially all of the assets used by the Program Administrator in the performance of this Agreement; or (iv) the occurrence of any other event whereby the person or group of persons who ultimately own or control the Program Administrator as of the Effective Date no longer has the right or ability to control or cause the direction of the management and policies of the Program Administrator. Clause (b) of this Paragraph 9.2.2 shall not, however, restrict the Program Administrator's ability to enter into contractual arrangements with Subcontractors and Implementers as contemplated in this Agreement. Upon any termination under this Paragraph 9.2.2, the Contract Administrator's liability to the Program Administrator shall be limited to any undisputed, actual costs the Program Administrator has incurred in carrying out the Work as of the date of termination.

9.3 Termination - Inadequate Appropriations

9.3.1. If the Wisconsin legislature enacts new legislation that requires a change or cancellation of the Focus on Energy Program, the Contract Administrator, subject to Commission approval, shall have the right to terminate this Agreement upon sixty (60) days' written notice to the Program Administrator. Upon a change or cancellation of the Focus on Energy Program, the Contract Administrator's liability to the Program Administrator shall be limited to the undisputed, actual costs incurred by the Program Administrator in carrying out the Work prior to the date of termination, plus any reasonable termination expenses. Termination expenses for which reimbursement may be appropriate are those expenses having prior written approval of the Contract Administrator, subject to Commission approval, and may include reasonable and necessary expenses relating to concluding outstanding obligations under the Agreement such as completing administrative duties, informing and coordinating with Subcontractors and Implementers, compiling and transferring Incentive check run data and expense information to the Fiscal Agent, working with the Commission to facilitate transition of Program obligations, information, intellectual property and proprietary material, and equipment and materials purchased with funds provided under this Agreement. Reimbursable termination expenses shall not include, without limitation, legal fees, costs or expenses incurred in disputing or litigating any claims arising from or relating to this Agreement or its termination or any alleged breach of the Agreement.

9.4 Responsibility of Parties Upon Expiration or Termination of Agreement

9.4.1. Upon expiration or termination of this Agreement, the Program Administrator shall provide reasonable transition assistance as requested by the Contract Administrator and the Commission and any entity designated by the Commission to ensure that the Program Administrator

functions are continuously carried out without interruption. In such an event, the Program Administrator agrees to use all reasonable efforts to mitigate its expenses and obligations hereunder. Transition assistance shall be performed in good faith and with a professional standard of conduct.

- 9.4.2. Upon expiration of the Agreement, the Contract Administrator's liability to the Program Administrator shall be limited to any undisputed, actual costs the Program Administrator has incurred in carrying out the Work as of the date of expiration or any expenses having prior written approval of the Contract Administrator, subject to the requirements of Attachment D. The Program Administrator shall refund to the Fiscal Agent any payment made by the Fiscal Agent which exceeds actual costs incurred by Program Administrator in carrying out the Work as of the date of expiration.

10.0 Committed Customer Incentive Payments

- 10.1 On the expiration or termination date of the Agreement, the Program Administrator may have outstanding contracts for customer Incentive payments. Subject to Paragraph 5 hereof, the Program Administrator shall be relieved of those obligations for such Incentive payments which have been properly approved by the Program Administrator and agreed to by the Contract Administrator, and responsibility for them will be assigned to the new entity serving as the Focus on Energy program administrator.

11.0 Notifications Required under this Agreement

- 11.1 Correspondence and transmittals of formal notifications, requests, reports or other documents concerning this Agreement, to be effective, shall be addressed to the respective person(s) as follows (or to such other individual or address as may be specified by such person through a notice given pursuant hereto):

Commission:	Carol Stemrich, Assistant Administrator Gas and Energy Division Public Service Commission of Wisconsin P.O. Box 7854 Madison, WI 53707-7854 608.266.8174 carol.stemrich@wisconsin.gov
SEERA:	Dennis M. Derricks, Chairperson, SEERA c/o Wisconsin Public Service Corporation 700 N. Adams Green Bay, WI 54301 920.433.1470 dmderricks@integrysgroup.com
Program Administrator:	Tamara Sondgeroth, Director of Operations CB&I Government Solutions, Inc.

1 South Pinckney, Suite 340
Madison, WI 53703
608.230.7028 direct
tamara.sondgeroth@cbi.com

12.0 Reporting Requirements

12.1 Reporting requirements are specified in the following attachments:

- Attachment A: Scope of Work - Management and Operations
- Attachment B: Scope of Work - Business Portfolio
- Attachment C: Scope of Work - Residential Portfolio
- Attachment D: Compensation, Payment, and Performance Bonus
- Attachment E: 2015-2018 Net Annual and Verified Gross Lifecycle Goals

13.0 Insurance

13.1 Program Administrator shall provide and maintain in full force and effect at no cost to Contract Administrator and the Commission the following insurance coverages with limits as indicated (which may also be revised to other amounts consistent with similar industry practice at the Contract Administrator's and Commission's discretion from time to time) at all times during the term of this Agreement, and beyond, as required.

13.2 Program Administrator shall maintain Worker's compensation and employer's liability insurance as required by law in the state in which Work is being performed; the employer's liability limits shall be \$1,000,000 each accident for bodily injury by accident and \$1,000,000 each employee for bodily injury disease.

13.3 Program Administrator shall maintain commercial general liability (CGL) insurance or its equivalent satisfactory to Contract Administrator and the Commission and, if necessary, commercial umbrella or excess insurance, with a total limit of \$2,000,000 each occurrence, with a \$5,000,000 annual aggregate; as described in more detail below. If such CGL insurance contains a general aggregate limit, it shall apply separately to this Agreement.

13.3.1. The CGL insurance shall be written on an occurrence form and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

13.3.2. The following specific paragraph shall be included in the CGL coverage:

Contract Administrator and the Commission shall each be included as an **ADDITIONAL INSURED** using the current ISO endorsement or an equivalent form.

This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Contract Administrator or the Commission. There shall be no endorsement or modification of the insurance to make it excess over other available insurance; alternatively, if the insurance states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insureds.

- 13.4 Program Administrator shall maintain automobile liability insurance (or its equivalent satisfactory to Contract Administrator and the Commission) and, if necessary, commercial umbrella or excess liability insurance with a combined single limit (or equivalent) of \$2,000,000 each accident, as described in more detail below:
- 13.4.1. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).
- 13.4.2. The following specific paragraph shall be included in the coverage:
- Contract Administrator and the Commission shall each be included as an ADDITIONAL INSURED using the current ISO endorsement or an equivalent form.
- 13.4.3. Program Administrator's insurance shall be primary with respect to Contract Administrator's and the Commission's insurance or self-insurance, and Program Administrator's policy shall not be written or endorsed contrary to this requirement.
- 13.5 Program Administrator shall maintain professional liability insurance (or its equivalent satisfactory to Contract Administrator and the Commission) with a limit (or equivalent) of \$2,000,000 each occurrence.
- 13.6 Program Administrator shall maintain crime and fidelity insurance (or its equivalent satisfactory to Contract Administrator and the Commission) with a limit (or equivalent) of \$15,000,000 each occurrence.
- 13.7 Program Administrator waives the right of subrogation, and waives all rights against Contract Administrator and the Commission and their respective agents, officers, directors and employees for recovery of damages.
- 13.8 All insurance shall be placed and maintained with insurers authorized to do business in the state in which Work is being performed and having an A.M. Best rating of A -, VII or better (or equivalent satisfactory to Contract Administrator and the Commission). Program Administrator agrees to furnish copies of any insurance policies for Contract Administrator's and the Commission's review if requested from time to time. Those policies may be redacted to prevent the disclosure of confidential information.

- 13.9 Program Administrator shall furnish the Contract Administrator and the Commission with duly executed Certificates of Insurance certifying that all such insurance coverages have been obtained, and that the Program Administrator will give the Contract Administrator and the Commission thirty (30) days' prior written notice of any material change in, or cancellation of, any such insurance coverage. Such certificate shall also specify the dates when such insurance commences and expires. Certificates should be delivered to the following address:

Dennis M. Derricks, Chairperson, SEERA
c/o Wisconsin Public Service Corporation
700 N. Adams
Green Bay, WI 54301

- 13.10 The Program Administrator agrees that all such insurance required above shall be maintained throughout the entire term of this Agreement (and thereafter, in certain circumstances, as described below). New Certificates of Insurance shall be provided to Contract Administrator and the Commission within two weeks of the renewal date of any expiring insurance coverage giving evidence of continuing coverage; Contract Administrator and the Commission may withhold any payments otherwise due Program Administrator until such certificates are received.
- 13.11 The failure of the Contract Administrator and the Commission to obtain evidence of such insurance from the Program Administrator before permitting Work to commence or continue shall not be deemed to be a waiver by Contract Administrator or the Commission of Program Administrator's obligations to obtain and maintain insurance, and the Program Administrator shall remain under a continuing obligation to maintain all insurance coverages set forth above.
- 13.12 Insurance policies maintained by Program Administrator shall be on an occurrence basis, except that professional liability insurance may be on a claims-made basis. If any insurance is written on a "claims made" basis, the Program Administrator shall maintain the coverage for a minimum of five (5) years after the expiration or termination of this Agreement. Upon request of the Contract Administrator and Commission, the Program Administrator shall furnish them with copies of any "claims made" policies and institute measures to guarantee further coverage for claims as contemplated by this Agreement.
- 13.13 No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Program Administrator for the Program Administrator's operations. These are solely minimum amounts and they do not affect the rights of the Contract Administrator and the Commission to further indemnification, nor do they limit the Program Administrator's liability.

14.0 Risk of Loss; Indemnification

14.1 Neither the Contract Administrator nor the Commission at any time assumes risk of loss for any personal property (such as, but not limited to: owned equipment, leased/rented/borrowed equipment, tools, employee tools and clothing) of Program Administrator, its Subcontractors or Implementers, or their respective employees, whether at Contract Administrator's or Commission's site or not.

14.2 Legal Relations and Indemnification

14.2.1. The Program Administrator shall at all times comply with and observe all federal and state laws, rules, regulations and published circulars, all Commission and court orders, and all local laws, ordinances, rules and regulations which are in effect during the period of this Agreement and which in any manner affect the Work or the Program Administrator's performance of this Agreement. In the event of any conflict between Commission orders and the terms and conditions of this Agreement, the Program Administrator will not be in breach of this Agreement if it complies with the terms and conditions of this Agreement in that situation.

14.2.2. The Program Administrator shall indemnify and hold harmless the Contract Administrator and the Commission and all of their respective officers, members, directors, agents and employees (the "Indemnified Parties") from (i) all suits, actions, and claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from the operations of the Program Administrator, or any of its officers, employees, agents, Subcontractors or Implementers, in or in connection with performing Work under this Agreement, and (ii) reasonable attorneys' fees and legal expenses incurred in defending against such suits, actions and claims.

14.2.3. The Program Administrator shall indemnify and hold harmless the Indemnified Parties from (i) all suits, actions and claims of any character brought for or on account of any obligations arising out of agreements between the Program Administrator and its Subcontractors or Implementers to perform services or otherwise supply products or services, and reasonable attorneys' fees and legal expenses incurred in defending against such suits, actions and claims, and (ii) any and all audit disallowances related to the allocation of administrative costs under this Agreement or the performance of this Agreement, irrespective of whether the audit is ordered by federal or state agencies or by a court or otherwise.

14.2.4. The Program Administrator shall expressly protect, indemnify, and hold harmless the Indemnified Parties from any and all claims, demands, suits, liabilities and expenses (including without limitation reasonable attorneys' fees and legal expenses) by reason of injury to or death of any agent or employee of the Program Administrator or any of its Subcontractors or

Implementers of any tier while or in connection with performing Work under this Agreement, including without limitation claims, demands and actions founded upon or growing out of the claim or assertion that any Indemnified Party did not furnish or afford at its premises a safe place of Work or employment or requisite statutory safety in a public building, or were otherwise either solely or jointly negligent; the Program Administrator further agrees to perform the Work in accordance with applicable safety laws, regulations, ordinances, orders and rules and agrees to indemnify and hold harmless the Contract Administrator and the Commission, and their respective officers, directors, members, agents, and employees from any and all civil penalties which may be assessed for violations of the Occupational Safety and Health Act of 1970, as amended, or any standards, rules or orders promulgated thereunder, or regulations prescribed pursuant thereto, where such violations exist either solely or partially by reason of any acts or omissions of the Program Administrator, its officers, agents or employees or its Subcontractors or Implementers of any tier.

14.2.5. The Program Administrator shall defend, indemnify and hold harmless the Contract Administrator and the Commission from and against any fraud, theft, stealing, diverting, embezzling, unlawful taking, unlawful distribution, computer fraud, forgery, voluntary parting, funds transfer fraud or misappropriation of funds by the Program Administrator, or its officers, agents, employees, affiliates, Subcontractors and/or Implementers.

14.2.6. EXCEPT AS SET FORTH BELOW, UNDER NO CIRCUMSTANCES WILL THE PROGRAM ADMINISTRATOR, THE CONTRACT ADMINISTRATOR OR THE COMMISSION BE LIABLE TO THE OTHERS FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS, LOSS OF OPPORTUNITY, ETC. Notwithstanding the foregoing, this exclusion shall not be applicable to Program Administrator in the event of the negligence, willful misconduct, misappropriation of funds or other activity against which the Program Administrator indemnifies the Contract Administrator and the Commission under Paragraph 14.2.5, or breach of confidentiality provisions set forth in this Agreement, by the Program Administrator or its officers, agents, employees, affiliates, Subcontractors and/or Implementers.

15.0 Conflict-of-Interest Provision

15.1 The Program Administrator, its employees and its Subcontractors and Implementers may engage in business activities, other than those described directly below in Paragraphs 15.2 and 15.3, as long as these activities do not create a conflict of interest with the performance of the Work. The Program

Administrator also (i) affirms that it, its employees and its Subcontractors and Implementers shall promptly and fully inform the Commission of any business activities and/or relationships which any person or entity, fully acquainted with the circumstances, could reasonably conclude might unfairly advantage the Program Administrator, employee, Subcontractor(s) or Implementer(s), and (ii) agrees that the Program Administrator, its employees and its Subcontractors and Implementers shall abide by the Commission's reasonable determination as to whether such activities or relationships fall within the terms of this Paragraph. The Program Administrator agrees, and agrees to obligate its employees, Subcontractors and Implementers, to discontinue any activity which the Commission determines to constitute a conflict of interest.

15.2 The Program Administrator affirms that neither it, nor any of its employees, Subcontractors or Implementers, has or presently expects to have or enter into any beneficial, contractual or business relationship with the Contract Administrator, the Commission, the Evaluator, the Compliance Agent or the Fiscal Agent that will be directly affected by the Program Administrator's performance of the Work. The Program Administrator further affirms that it and its employees, Subcontractors and Implementers shall not develop, pursue, or confirm any such beneficial, contractual, or business relationship with any of the above-mentioned persons or entities at any time during the term of this Agreement, or for 6 months thereafter, without the prior written permission of the Commission.

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

16.0 Records Available for Audit and Inspection

16.1 The Program Administrator shall maintain, and shall cause each of its Subcontractors and Implementers to maintain, accurate and complete records, books, documents, payroll papers, accounting records and materials, invoices, receipts, copies of contracts with Subcontractors and Implementers, and other evidence pertaining or relating to the Work the Program Administrator or its Subcontractors and Implementers perform, and all transactions related thereto, or to the costs it incurs under this Agreement (collectively, and whether in tangible, digital or electronic form, the "Records"), with all such Records to be maintained in accordance with Generally Accepted Accounting Principles consistently applied, and to be retained by the Program Administrator and its Subcontractors and Implementers throughout the term of this Agreement and for six (6) years following its termination or expiration. The Program Administrator shall make, and shall cause each of its Subcontractors and Implementers to make, all such Records available upon request at reasonable times and from time to time during the term of this Agreement and for six (6) years thereafter for inspection and audit by the Contract Administrator, the Commission, the Compliance Agent, the Evaluator, the Fiscal Agent or any of their respective authorized representatives or

agents. If any litigation, claim, or audit begins on or before the date that is six (6) years after this Agreement terminates or expires but is not concluded by such date, the Records shall be retained by the Program Administrator and its Subcontractors and Implementers until all litigation, claims or audit findings involving the Records have been resolved. The Program Administrator shall include in all of its subcontracts a provision that states that the records of the Subcontractors and Implementers related to the Work shall be subject to audit and examination during the term of this Agreement and for a period of six (6) years thereafter. The provisions in Paragraph 16 shall also apply in the event of termination of this Agreement for any reason. The Program Administrator shall notify the Commission in writing of any planned conversion or destruction of any Records at least 90 days prior to such action, but the Program Administrator may not convert or destroy any Records it is required to maintain and retain hereunder. Any charges for copies provided by the Program Administrator of books, papers, computer files, computer printouts or other Records pursuant to this Paragraph 16 shall not exceed the actual cost thereof to the Program Administrator and shall be reimbursed by the Fiscal Agent. The Program Administrator shall cooperate fully, and cause each of its Subcontractors and Implementers to cooperate fully, in all inspections and audits, including without limitation by making their respective personnel available for questioning by the auditor(s).

- 16.2 The Records to be maintained and retained by the Program Administrator and its Subcontractors and Implementers must include the following, without limitation, and without limiting the obligations of the Program Administrator and its Subcontractors and Implementers under Paragraph 16.1: 1) Documentation of employee time and billing rates; 2) Documentation of all equipment, materials, and supplies billed to Focus on Energy, if any; 3) Inventory records and supporting documentation for allowable equipment purchased, if any, to carry out the Work; 4) Documentation and justification of methodology used in any in-kind contributions; 5) Rationale supporting allocation of space charges, if any; 6) Rationale and documentation of indirect costs, if any; 7) Documentation of services and materials used in the Work and billed to Focus on Energy; 8) Documentation supporting and substantiating any other direct expenses for which the Program Administrator is billing Focus on Energy, it being understood that the Program Administrator shall not bill Focus on Energy for any expenses except those identified and contained in a Commission-approved umbrella marketing plan or those from Commission-approved Subcontractors under Commission-approved subcontracts; 9) Documentation establishing that the Program Administrator and its Subcontractors and Implementers have submitted all reports, and delivered all other deliverables, that are required to be submitted or delivered by them pursuant to this Agreement, as well as the dates on which those reports were due and when they were submitted, and the dates on which those deliverables were due and when they were delivered; 10) For each item, report, Subcontractor, Implementer, event or thing with respect to which the Program Administrator is required under this Agreement to obtain the approval of the Commission, the Commission staff, and/or the Contract Administrator, documentation establishing that such approval has been obtained, and when it was

obtained; and 11) Any and all other Records which support charges to project funds or which relate to the performance of the Work or any transaction related thereto. The Program Administrator must maintain sufficient segregation of Work-related Records from other projects or programs.

17.0 Legislative Testimony and Communication with Other Stakeholders

17.1 The Program Administrator and any Subcontractor or Implementer may provide legislative testimony or other information to legislators or legislative committees on energy efficiency and renewable energy issues in its capacity as the Program Administrator or Subcontractor or Implementer for the Focus on Energy Program, respectively. The Program Administrator or Subcontractor or Implementer may also provide legislative testimony or other information to legislators or legislative committees on energy efficiency, renewable energy and other issues on behalf of its own organization or, upon request, on behalf of Contract Administrator and/or the Commission. In order to prevent confusion regarding whether legislative testimony or information is being presented on behalf of the Focus on Energy Program or on behalf of the Program Administrator's or Subcontractor's or Implementer's own organization or on behalf of Contract Administrator and/or the Commission, the parties agree to the following guidelines:

17.1.1. Whenever the Program Administrator or a Subcontractor or Implementer is requested to provide legislative testimony or other information to legislators or legislative committees in its capacity as the Focus on Energy Program Administrator or Subcontractor or Implementer, as applicable, it shall notify the Commission. This notification shall include the name of the Committee or legislator requesting the testimony or information, the date and time the testimony is scheduled, and the specific topic to be discussed. No testimony shall be provided by the Program Administrator or any Subcontractor or Implementer related to the Focus on Energy Program prior to receiving approval from the Commission. Following the hearing, the Program Administrator or Subcontractor or Implementer shall provide the Commission with a copy of any written materials specifically developed for, and handed out at, any appearance;

17.1.2. Any person testifying at the legislature or providing other information to legislators or legislative committees on behalf of the Focus on Energy Program or on behalf of his/her own organization, shall state on the record at the beginning of his/her testimony which entity he/she is representing;

17.1.3. Any person testifying at the legislature or providing other information to legislators or legislative committees on behalf of the Focus on Energy Program shall not provide testimony or information that would, in the reasonable judgment of the Contract Administrator or the Commission, diminish the Program Administrator's effectiveness unless such testimony is required by operation of law; and

17.1.4. Whenever the Program Administrator or a Subcontractor or Implementer is requested to provide information in its capacity as the Focus on Energy Program Administrator or Subcontractor or Implementer, as applicable, by Utility staff, interveners or other stakeholders participating in rate cases, or other issues which require a Commission decision and order, they shall first notify the Commission. This notification shall include the name of the person and the organization for which he/she works and the nature of the topic to be discussed.

18.0 Program Income

18.1 All Program Income shall be tracked and recorded on the Program Administrator's monthly invoice on a line item called "Program Income." Program Income generated in a specific Program area, e.g. education and training, shall be submitted to the Fiscal Agent on a quarterly basis. These funds will be deposited in the Focus on Energy general fund. Should these funds be needed by the Program Administrator for the Program area that generated them, the dollars can be transferred to the Program Administrator through an amendment to this Agreement that has been signed by the parties and approved by the Commission.

19.0 Ownership of Data, Records and Intellectual Property; Confidentiality

19.1 Work Product

19.1.1. All products of the Program Administrator's and its Subcontractors' and Implementers' Work, including without limitation logos, trademarks, service marks, data, and records originated, developed or prepared by the Program Administrator or its Subcontractors or Implementers, or originated, developed or prepared jointly by the Program Administrator, and/or Subcontractor(s) and/or Implementer(s), and/or the Commission or its agents and/or the Contract Administrator or its agents pursuant to this Agreement, including but not limited to papers, outlines, drawings, sketches, art work, plans, photographs, specifications, estimates, reports, charts, surveys, survey results, computer databases and spreadsheets or similar documentation, and any Work product determined by the Commission to be necessary to the success of the Programs approved for implementation by the Commission, shall be delivered to and are and shall be the sole property of the Commission. The Program Administrator may resell a Work product only with the Commission's prior written approval; if after receiving such approval the Program Administrator resells any Work product, ninety percent (90%) of the funds received from such sale shall be used by the Program Administrator as a credit on its monthly invoice pursuant to Attachment D. The remaining ten percent (10%) shall be retained by the Program Administrator.

19.1.2. Notwithstanding any other language in this Agreement to the contrary, (i) all pre-existing Program Administrator intellectual property and

proprietary material, provided that it has been identified in advance in writing as such with reasonable particularity, shall remain the sole property of Program Administrator, and nothing in this Agreement shall be construed as giving Commission any right or form of ownership to such intellectual property or proprietary material, and (ii) Program Administrator acknowledges and agrees that Contract Administrator is the sole owner of all databases, Program participant information, Utility customer usage information, and similar data developed or delivered in connection with the Programs to be administered hereunder (all of which shall be deemed to be "Confidential Information" of the Contract Administrator for purposes of this Agreement), and Program Administrator shall acquire no rights of ownership in any such materials, and shall provide all such materials to the Contract Administrator upon request.

19.2 Equipment and Materials Purchased Under This Agreement

19.2.1. Title to equipment or materials purchased directly with funds provided under this Agreement (if any) shall vest in the Commission's name, unless otherwise specified by an amendment to this Agreement. Disposition of any such equipment or materials shall be in accordance with applicable State of Wisconsin property disposal procedures, unless otherwise specified by an amendment to this Agreement.

19.3 Research Reports or Similar Publications

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

19.4 Surviving Expiration or Termination of This Agreement

19.4.1. The terms of Paragraph 19 shall continue in effect during the term of this Agreement and for a period of two (2) years after the expiration or termination of this Agreement. The terms of Paragraph 16 shall continue in effect during the term of this Agreement and for at least six (6) years after the expiration or termination of this Agreement, or longer, if so indicated in Paragraph 16. More generally, those provisions of this Agreement that by their express terms or nature are intended to survive termination or expiration of this Agreement (including without limitation the indemnification provisions) shall so survive.

19.5 Confidentiality

19.5.1. **Obligation.** Each party shall keep confidential and, except for the purpose of fulfilling its obligations under or exercising its rights under this Agreement, shall not disclose to any third party or use for its own benefit or for the benefit of any third party, any Confidential Information of the other party. Each party as receiving party shall limit access to Confidential Information of the disclosing party to those of its employees or agents who have a need to know such Confidential Information in order to perform the receiving party's obligations under this Agreement, and who are under a duty of confidentiality at least as restrictive as the confidentiality obligations set forth in this Agreement. The obligations set forth in this Paragraph shall survive any termination or expiration of this Agreement.

19.5.2. **Exclusions.** The above confidentiality obligations in Paragraph 19.5.1 shall not apply to information requested by the Commission provided that the Commission affords the disclosed information confidential protection to the extent allowed by law. The above confidentiality obligations in Paragraph 19.5.1 shall also not apply to information which (a) is or becomes generally known or available through no act or failure to act by the receiving party; (b) is already known by the receiving party at the time of receipt from the disclosing party hereunder as evidenced by its records; (c) is furnished to the receiving party by a third party, as a matter of right and without restriction on disclosure; or (d) is disclosed with the written permission of the disclosing party providing the Confidential Information. In addition, the receiving party shall be entitled to disclose Confidential Information of the disclosing party pursuant to a requirement of a governmental agency or law, provided that the receiving party provides prompt written notice to the disclosing party of such requirement or law so as to afford the disclosing party an opportunity to intervene and oppose or limit disclosure and/or obtain a protective order.

19.6 **Injunctive Relief.** The parties acknowledge that a breach or threatened breach of Paragraph 19.5 by either of the parties may cause the non-breaching party to suffer irreparable harm and injury such that no remedy at law will adequately compensate the non-breaching party. Thus, the non-breaching party shall have the right to obtain injunctive relief with respect to any such breach or threatened breach, in addition to damages and other remedies.

20.0 Use of the "Focus on Energy" Name

20.1 The official name of the statewide energy efficiency and renewable energy resources programs is "Focus on Energy." This is the only identifying name that shall appear on Program marketing materials. The names of the Program Administrator and its Subcontractors and Implementers or their affiliates shall not appear on any Focus on Energy marketing materials or other documents provided to customers served by the Program Administrator or its Subcontractors or

Implementers. The intent of this requirement is to have one name and one identity for energy efficiency and renewable resource programs in order to prevent confusion among customers served by the Program Administrator and its Subcontractors or Implementers when the Program Administrator and its Subcontractors or Implementers are providing Program services.

21.0 No Gifts or Gratuities

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

22.0 Applicability to Subcontractors and Implementers and Others

22.1 The Program Administrator shall obtain written statements from anyone it employs or contracts with to perform the Work that they understand and agree to be bound by the terms of Paragraphs 19, 20 and 21 of the Main Agreement.

23.0 Fair Employment Practices and Americans with Disabilities Act

23.1 The Program Administrator agrees to comply with the requirements of Wisconsin and federal law relating to fair employment practices. To the full extent applicable, the Program Administrator shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990 and any amendments thereto, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Program Administrator under this Agreement. The Program Administrator further agrees to include this provision in all of its subcontracts.

24.0 Force Majeure

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

25.0 Severability

25.1 If any provision of this Agreement shall be adjudged to be unlawful or invalid, then that provision shall be deemed null and void and severable from the

remaining provisions, and shall in no way affect the validity of this Agreement, and the remaining provisions shall be construed so as to give the greatest effect to the intent of the parties.

26.0 Survival of Requirements

26.1 Unless otherwise authorized in writing by the Contract Administrator and approved by the Commission, the terms and conditions of this Agreement shall survive the term of this Agreement and shall continue in full force and effect until the Program Administrator has completed, and is in compliance with, all of its requirements, or if applicable, until the end of the applicable time period specified in Paragraph 19.4.1.

27.0 Waiver

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

28.0 Applicable Law

28.1 This Agreement shall be governed by the laws of the State of Wisconsin. The exclusive venue for any dispute or controversy arising out of or under this Agreement shall be the Dane County, Wisconsin Circuit Court or the Federal District Court for the Western District of Wisconsin.

29.0 Financial Audit

29.1 On an annual basis throughout the term of this Agreement, the Program Administrator shall undergo a certified financial audit performed utilizing Generally Accepted Accounting Principles and Generally Accepted Auditing standards. The Program Administrator shall provide the Commission and the Contract Administrator with a copy of the audit report for each such audit within sixty (60) days after the completion of the audit.

30.0 Entire Agreement


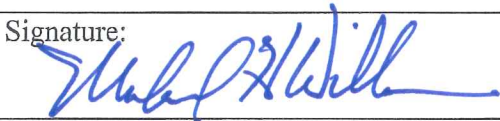
30.1 This Agreement, including its Attachments, represents the entire agreement between the parties relating to the subject hereof. All prior and contemporaneous agreements, representations, statements, negotiations, and understandings (whether written or oral) are merged herein and shall have no effect. The Program Administrator acknowledges and agrees that (i) the Contract Administrator is the sole counter-party to this Agreement, (ii) the Contract Administrator is a separate legal entity distinct from its members, and (iii) the individual members and affiliates of Contract Administrator shall have no rights or obligations under this Agreement. This Agreement consists of the following documents:

- Main Agreement
- Attachment A: Scope of Work - Management and Operations
- Attachment B: Scope of Work - Business Portfolio
- Attachment C: Scope of Work - Residential Portfolio
- Attachment D: Compensation, Payment, and Performance Bonus
- Attachment E: 2015 – 2018 Net Annual and Verified Gross Lifecycle Goals

The Policy Manual does not form a part of this Agreement, although it does provide rules, regulations and policies of the Focus on Energy Program that must be followed by the Program Administrator and its Subcontractors and Implementers. In the event of any conflict between the provisions of this Agreement and the provisions of the Policy Manual, the provisions of this Agreement shall take precedence.

30.2 The parties agree and acknowledge that this Agreement is subject to the approval of the Commission.

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

By the STATEWIDE ENERGY EFFICIENCY AND RENEWABLES ADMINISTRATION, INC. (SEERA)	By CB&I GOVERNMENT SOLUTIONS, INC.
Date: December 23, 2014	Date: December 23, 2014
Signature: 	Signature: 
Name: Dennis Derricks	Name: Michael Dillman
Title: Chairperson	Title: President



ATTACHMENT A

SCOPE OF WORK – MANAGEMENT AND OPERATIONS

In the event of a conflict between the provisions of the Main Agreement and this Scope of Work, the provisions in this Scope of Work shall take precedence. Capitalized terms used but not defined herein shall have the meanings given to them in the Main Agreement.

1.0 Introduction

This Scope of Work is for the period of January 1, 2015 through December 31, 2018, concerning the management and operations of Focus on Energy as it is administered by the Program Administrator.

2.0 Statutory Purpose and Priorities

- 2.1 The Program Administrator and its Implementers shall offer Programs that meet the priorities and purposes specified in Wis. Stat. § 196.374(2)(a)2 and (3)(b)1.
- 2.2 The Program Administrator, through the Business and Residential Portfolios, shall meet the Commission-approved four year verified Gross Lifecycle Energy Savings and Demand Reduction Goals set forth in Attachment E.
- 2.3 Benefit/Cost Ratio. The Program Administrator shall ensure that, on an annual and quadrennial basis, the total Portfolio of all Focus on Energy Programs will result in a benefit/cost ratio that is at least equal to one (1.0), using a modified Total Resource Cost (TRC) test that is calculated consistent with the Commission's decisions in the quadrennial planning process II, docket 5-FE-100.
- 2.4 The Program Administrator and its Implementers shall document all steps taken to mitigate Free-ridership and, as applicable, follow the process for developing a Free-ridership Mitigation Plan as outlined in the 2015-2018 template Implementer Contract.
- 2.5 The Program Administrator shall ensure that approximately 60 percent of the annual Focus on Energy Program budget is allocated to the Business Portfolio Programs and approximately 40 percent of the Focus on Energy Program budget is allocated to Residential Portfolio Programs.
- 2.6 The Program Administrator shall ensure that all eligible Utility customers in all business, residential and other Sectors, regardless of geographic location, have equal opportunity to participate in Focus on Energy electric and natural gas efficiency and renewables programs.

3.0 Coordination and Collaboration

The Program Administrator shall coordinate with its Implementers and Subcontractors, the Contract Administrator, the Commission, Commission staff, other Contractors, and

stakeholders (including without limitation Utilities participating in Focus on Energy, Trade Allies, the Wisconsin Department of Administration, and certain environmental advocacy groups) throughout the term of the Agreement to advance Focus on Energy goals and objectives.

- 3.1 The Program Administrator shall meet quarterly with the Contract Administrator to review accomplishments, identify issues that need attention, and discuss future activities.
 - 3.2 The Program Administrator shall meet weekly, unless otherwise agreed to by the Commission, with the Commission staff to review accomplishments, identify issues that need attention, and discuss future activities.
 - 3.3 The Program Administrator shall host semi-annual meetings, unless otherwise agreed to by the Commission, with Implementers to review accomplishments, coordinate activities, identify issues that need attention, and discuss future activities.
 - 3.4 The Program Administrator shall participate in meetings organized by the Commission with the Commission, other Contractors, and key Implementers for the Focus on Energy Program. The Program Administrator shall make presentations as requested from time to time by the Commission relating to program planning, implementation, monitoring outcomes and results for other audiences.
 - 3.5 The Program Administrator shall meet with Focus on Energy Trade Allies on a quarterly basis, and other stakeholders (as identified in the first sentence of Section 3.0 above) when issues arise or otherwise as appropriate, to advance Focus on Energy goals and objectives.
 - 3.6 The Program Administrator shall meet with participating Utilities on a quarterly basis or otherwise as appropriate to inform them of Focus on Energy progress, gather feedback and inform them of new Program offerings or changes to existing Programs. The Program Administrator will also work to coordinate Focus on Energy activities with Utilities that operate a Commission-approved voluntary utility program.
 - 3.7 The Program Administrator, if it has received prior approval from Commission staff, shall enter into strategic partnerships to advance Focus on Energy goals and objectives.
- 4.0 Manage all Program Administrator Staff and Implementers and Subcontractors
- 4.1 The Program Administrator shall solicit, select, hire, and oversee employees, Implementers and Subcontractors to perform the Work pursuant to the Agreement and develop methods for managing their performance and compensation with input from Commission staff. The Program Administrator shall bring in industry-specific and technology-specific specialized expertise on an as-needed basis to

provide the appropriate level of energy efficiency and renewable energy technical assistance to Customers.

- 4.2 By January 31, 2015, the Program Administrator shall develop and submit to the Commission for review and approval an employee retention plan for its Madison office. The plan must identify any monetary incentives proposed to be offered by the Program Administrator and the funding source for these incentives.
- 4.3 The Program Administrator acknowledges that any staffing changes made by the Program Administrator during the contract period could result in inefficiencies while the replacement personnel are being trained and commencing performance of Work. Therefore, should a new staff person be hired or contracted, or should an existing staff person who did not previously work on Focus on Energy be reassigned, to replace an outgoing Focus on Energy staff person, the new or reassigned person shall be billed at 50 percent of the otherwise applicable billing rate under the Agreement for the first thirty (30) days of their employment on the Work. Program Administrator also agrees that no time will be billed to the Focus on Energy Program associated with the on-boarding process or orientation for a new hire.
- 4.4 Should the Program Administrator, with consent of the Commission, promote a staff person on the Focus on Energy Program such that the person's Focus on Energy billing rate increases, it shall increase the compensation that it pays to such person by an amount and within a timeframe that is in compliance with Program Administrator's then current Human Resources policies and procedures, but only if Program Administrator has not already increased such person's compensation within the preceding six (6) months and not also changed such person's billing title on the Focus on Energy Program. With respect to any audit by Compliance Agent of Program Administrator's obligations under this Section 4.4., Program Administrator shall provide information requested by Compliance Agent under a standard non-disclosure agreement that is mutually acceptable to both the Program Administrator and the Compliance Agent (such acceptance not to be unreasonably withheld or delayed) by which Compliance Agent would not be permitted to share such information, including but not limited to employee compensation information, with any third party (except to the extent permitted by the express terms of the non-disclosure agreement), but would use such information for Compliance Agent's audit purposes only to verify compliance with Program Administrator's obligations under this Section 4.4.
- 4.5 The Program Administrator shall notify and seek approval from the Commission prior to any key individual staffing changes being made by the Program Administrator. The Program Administrator shall notify the Commission in writing within fifteen (15) days of Program Administrator's gaining knowledge of any change in status of any of the Program Administrator's Subcontractors, any Implementers, or any of any Implementer's subcontractors, it being understood that the Program Administrator shall use commercially reasonable efforts to learn of such changes in status as promptly as possible, and shall contractually require

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

- 4.6 The Program Administrator shall conduct all solicitations for Implementers and Subcontractors in a manner that is fair and promotes competition. The list of Subcontractors and Implementers that the Program Administrator intends to use during each calendar year shall be submitted to Commission staff for review and approval by November 15 of the immediately preceding year; except that the list of proposed Subcontractors and Implementers for 2015 shall be submitted to Commission staff by January 31, 2015. Program Administrator shall also provide each proposed agreement that it intends to enter into with a Subcontractor to Commission staff for review and approval reasonably far in advance of the date on which the Program Administrator intends to execute that agreement.
- 4.7 The Program Administrator shall be responsible for all matters involving any of its Implementers or Subcontractors engaged under this Agreement, including without limitation contract compliance, performance, and dispute resolution, with input from Commission staff.
- 4.8 The Program Administrator shall present itself, and shall cause all of its Implementers and Subcontractors to present themselves, as representatives of Focus on Energy when they deal with the media, the public and Program participants regarding Focus on Energy Programs. In media dealings that involve Focus on Energy funded activities, the Program Administrator and its Implementers and Subcontractors shall clearly state and identify that the activity or program is funded by Focus on Energy.
- 4.9 The Program Administrator through its Implementers shall ensure that all participating customers and all energy efficiency and renewables programs and savings activities are eligible per the applicable Program requirements.
- 4.10 Compliance Agent
 - 4.10.1. The Program Administrator shall comply, and shall cause all of its Implementers and Subcontractors to comply, with all reasonable auditing

requests made by the Compliance Agent as directed by the Commission. The Program Administrator shall cooperate, and shall cause all of its Implementers and Subcontractors to cooperate, in a timely manner with the Compliance Agent and meet deadline requests set by the Compliance Agent (as such requests may be extended by the Compliance Agent in its discretion in response to a request for change or extension that has been made in writing). The Commission may withhold payments otherwise due to the Program Administrator until the Program Administrator and all of its Implementers and Subcontractors have fully complied with an audit request. The Compliance Agent shall grant Program Administrator and its Implementers and Subcontractors at least ten (10) business days to respond to audit requests. The Program Administrator and each of its Implementers and Subcontractors shall have the opportunity to review and comment on that portion of any draft audit report that applies to it, and discuss any draft findings with the Compliance Agent, prior to the audit report being sent to Commission staff and finalized.

- 4.10.2. Without limiting its obligations under Section 4.10.1, in connection with each audit, the Program Administrator shall provide the Compliance Agent, without limitation, with the following: (1) copies and supporting documentation for all costs claimed on invoices charged to the Contract Administrator, (2) time keeping records (3) random timekeeper testing, (4) documentation of bidding process for awarding contracts to Subcontractors or Implementers, (5) memos or flowcharts documenting internal controls, and (6) support for the allocation of rent/overheads charged to Focus on Energy.
- 4.10.3. Should the Compliance Agent find that (i) the Program Administrator has invoiced the Focus on Energy Program for a non-reimbursable charge, cost or expense, or has otherwise overcharged Focus on Energy or the Contract Administrator, or (ii) the Program Administrator has invoiced the Focus on Energy Program for charges, costs or expenses that the Compliance Agent is unable to substantiate, then upon request of the Commission, the Program Administrator shall reimburse the Focus on Energy Program for the amount in question by a credit or correction on its next invoice or by submitting a check to the Fiscal Agent, made payable to the Contract Administrator.

5.0 Financial Administration and Management

- 5.1 The Program Administrator shall be responsible for ensuring all financial data entered in SPECTRUM is accurate.
- 5.2 The Program Administrator shall submit monthly invoices to the Commission for review and approval. The Program Administrator shall ensure all information (including without limitation summaries of employee billing which include name,

title, line item, hours worked, billing rate, and total billed by employee) is submitted electronically via SPECTRUM.

- 5.3 The Program Administrator shall adhere, and shall ensure that all of its Implementers and Subcontractors adhere, to all requirements outlined in the Policy Manual, as it may be amended from time to time with Commission approval. In the event of any conflict between the provisions of this Agreement and the provisions of the Policy Manual, the provisions of this Agreement shall take precedence. (See Paragraph 30.1 in the Main Agreement.)
- 5.4 Per Wis. Stat. § 196.374(1) or Wis. Stat. § 196.374(2)(a)2.b, the Program Administrator shall ensure that ten percent of the total Focus on Energy Portfolio budget is reserved for agricultural producers and Local Units of Government on an annual basis. If that full amount cannot be spent on cost-effective programs for Local Units of Government and agricultural producers, any surplus funds will be spent on commercial, institutional and industrial customers. Schools that are funded by taxpayers in the state are also included in this group, because they are Local Units of Government.
- 5.5 The Program Administrator and all of its Implementers shall utilize SPECTRUM to manage and track all invoices, payments, and customer Incentives and other fiscal records pertinent to Focus on Energy Program administration and accounting.
- 5.6 The Program Administrator shall conduct an annual inventory of each non-expendable item and equipment directly funded by the Agreement or the Focus on Energy Program that cost \$1,000 or more and is within its useful life, and maintain appropriate records and documentation with respect thereto.
- 5.7 Draft annual Program budgets for the Business and Residential Portfolios shall be submitted to Commission staff by the Program Administrator no later than November 1 of the year prior to the year those budgets will be in effect (except that the Program budgets for 2015 shall be submitted to Commission staff by January 15, 2015). Absent written approval by the Commission of the individual proposed budgets by December 1 of the year prior to the year those budgets are to be in effect, the most recent Commission-approved budgets will remain in effect until a new budget is approved.
- 5.8 The Program Administrator shall manage the renewable Incentive budget as established by the Commission in docket 5-FE-100 within the prescribed budget limits. Should the budget be exceeded, the Program Administrator and its Implementers shall be required to pay the amount of the excess themselves out of their own funds; and if Focus on Energy ultimately pays any portion of this excess, the Program Administrator and its Implementers shall promptly reimburse Focus on Energy out of their own funds for the amount so paid. For the avoidance of doubt, if the Program Administrator or its Implementers promise or commit to providing an Incentive, they cannot rescind that promise or

commitment as long as all other eligibility requirements are met by the customer; in this situation, the Incentive must be provided, even if it causes the budget to be exceeded and thereby obligates the Program Administrator and its Implementers to pay the amount of the excess out of their own funds.

5.9 Encumbrance Amounts

5.9.1. During any given program year, the Program Administrator may encumber/obligate up to, but not more than, 50 percent of any subsequent program year's Incentive budget on Incentives to be paid in that subsequent year in order to maintain a full project pipeline (for example, during 2015, the Program Administrator may obligate up to, but not more than, 50% of the 2016 Incentive budget on projects to be paid during 2016). However, if during any program year (the "Current Year"), there is no approved Incentive budget for the following year, then the Program Administrator may encumber/obligate an amount up to, but not more than, 50% of the Current Year's Incentive budget on Incentives to be paid in that following year in order to maintain a full project pipeline. If in any program year the Program Administrator encumbers/obligates 40 percent of a subsequent program year's Incentive budget (or an amount equal to 40 percent of the Current Year's Incentive budget if there is no approved Incentive budget for the following year), the Program Administrator shall notify the Commission to discuss options on how to proceed.

5.9.2. In addition to the fifty (50) percent rule described above, the Program Administrator shall conduct a quarterly review of obligations to determine if certain long-term projects are going forward or if the dollars should be de-obligated.

5.9.3. The Program Administrator shall submit a quarterly report on the obligations to Commission staff for review.

6.0 Systems Management

6.1 Microsoft CRM System (SPECTRUM)

6.1.1. The Program Administrator shall employ an IT systems team that will assist the Commission staff representative in all matters regarding the maintenance, support, and ongoing improvement of SPECTRUM and other key Focus on Energy Program systems. The systems team will consult with and work through the Commission representative for all matters related to SPECTRUM, and any decisions related to SPECTRUM are subject to the approval of Commission staff.

6.1.2. Any and all requests for access to SPECTRUM from Implementers, Utilities, etc., shall be directed to the Program Administrator, which will

send the requests to Commission staff for review and approval, all in accordance with the requirements of the Policy Manual.

- 6.1.3. The Program Administrator shall issue any and all requests for inclusion of new measures or measure changes in SPECTRUM and will send the requests to Commission staff for review and approval.
- 6.1.4. The Program Administrator's responsibilities with respect to SPECTRUM shall include, but not be limited to, the following:
 - 6.1.4.1 Serving as the first line of technical support for all SPECTRUM users. This includes reviewing, evaluating, and when possible, resolving system issues that arise.
 - 6.1.4.2 Providing training and assistance to all Program Administrator, Implementer and Subcontractor staff when requested and through pro-active outreach. This includes hosting working groups, developing how-to videos, etc.
 - 6.1.4.3 Ensuring that each Implementer and Subcontractor has an adequate internal training plan that adheres to the Focus on Energy and SPECTRUM-specific policies and procedures. All new users must be required to have a baseline of knowledge before they start using the system.
 - 6.1.4.4 Developing and maintaining processes for monitoring data quality in all areas of SPECTRUM.
 - 6.1.4.5 Evaluating the data being collected to ensure it has a legitimate use for core Focus on Energy Program goals and/or objectives.
 - 6.1.4.6 Ensuring that all key performance indicators (KPIs) in Program Administrator's contracts with Implementers and other data reporting provisions are feasible both from a data collection and reporting standpoint before program plans are developed.
 - 6.1.4.7 Performing monthly reviews of user activity to ensure that all licenses are being utilized. Users that have licenses but are not accessing the system are to be deactivated.
 - 6.1.4.8 Assisting Commission staff in the updates of the SPECTRUM Reference Guide and other supporting documentation.
 - 6.1.4.9 Assisting with monitoring and cleanup of SPECTRUM data as directed by the Commission staff.

- 6.2 The Program Administrator shall maintain a MS Sharepoint system that provides access for Implementers, the Program Administrator, and Commission staff. The

system will eventually be located on a hosted service as determined by the Commission.

- 6.3 The Program Administrator, and all of its Subcontractors and Implementers which use SPECTRUM, shall each maintain sufficient information technology systems (software, hardware, network speeds, etc.) to enable them to fully access and utilize SPECTRUM. The connectivity speed of the Program Administrator and each of its Subcontractors and Implementers shall be tested semiannually. Any organization whose performance is less than the Policy Manual speed requirement will be required to repeat the test on a monthly basis until such time as speed meets or exceeds the Policy Manual speed requirement. If the speed requirement is not met by any organization after 6 months of non-compliance, 15% of all future invoice balances otherwise owed to the organization that is not in compliance will be held back until compliance is achieved.
- 6.4 The Program Administrator shall ensure that its Implementers use the functions in SPECTRUM to the maximum degree feasible for effective delivery of their Program(s). Unless given a waiver by the Commission, no other system shall be used by the Program Administrator or any of its Implementers that replicates or overlaps SPECTRUM functionality. This includes but is not limited to storing large amounts of Program data. The Program Administrator shall maintain a list of all software/iPad/databases used by each of the Implementers to access SPECTRUM.
- 6.5 Focus on Energy Program Data
 - 6.5.1. The Commission retains ownership of all data gathered under this Agreement or through activities under or funded by this Agreement. The Program Administrator shall notify the Commission prior to release of any such data or its analysis, and no such release shall occur without the prior written consent of the Commission.
 - 6.5.2. The Program Administrator shall geo-code participant identifying information, such that it is possible to report by location (Utilities and counties) on results achieved and customers serviced.
 - 6.5.3. The Program Administrator shall coordinate with the Commission regarding planning for future collection of Program data not currently being collected.
 - 6.5.4. The Program Administrator shall include in its required monthly reports to the Commission data on the status of any unresolved customer complaints.
 - 6.5.5. The Program Administrator shall treat all individual customer information as Confidential Information consistent with the provisions in the Main Agreement, Paragraph 19.5, and the Policy Manual. The Program Administrator shall not release any of this information to the public, to any

third party or to the Contract Administrator unless authorized in writing by the Commission.

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

6.6 Reporting

- 6.6.1. The Program Administrator shall work with the Commission to utilize an effective monthly and annual activity report format, including without limitation unverified energy savings results, budget status, progress to date and Program accomplishments. The Program Administrator shall produce required reports using the templates agreed upon by it and the Commission and submit completed reports to the Commission.
- 6.6.2. The Program Administrator shall cooperate with the Commission to respond to all requests for information on the Focus on Energy Programs from the public, the Legislature, the Governor's office and other interested parties.
- 6.6.3. The Program Administrator shall assist the Commission with writing and compiling various reports required under Wis. Stat. §196.374, including, but not limited to:
- 6.6.3.1 A biennial report to the Governor that summarizes the amount recovered from each customer class and the amount of grants made to, and benefits received by, each customer class.
 - 6.6.3.2 An annual report to the Legislature on the expenses of the Commission, Utilities and Program Administrator incurred by or in implementing the Focus on Energy Program. The report shall also include the Focus on Energy Program's effectiveness in reducing demand for electricity and increasing the use of renewable resources.
 - 6.6.3.3 An annual statement by Energy Utilities describing programs and presenting cost and benefit information.

6.7 Potential SPECTRUM-Related Changes

The Program Administrator and the Contract Administrator are engaged in discussions regarding the possibility of transferring all or some

SPECTRUM-related assets or licenses from the Contract Administrator to the Program Administrator, and/or the Program Administrator assuming the contract with Wipfli for the maintenance and development of SPECTRUM and related licenses. The parties agree to work in good faith in an attempt to determine whether and how they wish to proceed in this regard by March 31, 2015. In addition, the Program Administrator agrees to provide the Contract Administrator with its assessment of the potential tax and accounting implications of the various proposed SPECTRUM-related changes by January 31, 2015.

6.8 Evaluation

In cooperation with the Commission and the Evaluator, the Program Administrator shall ensure that accurate and complete data for measurement and verification of Focus on Energy Program energy savings, performance metrics and non-energy benefits is collected, stored, formatted and shared with the Commission, the Evaluator, and other persons or entities that the Commission or the Contract Administrator determines need the data. The Program Administrator shall participate in Evaluation Workgroup meetings.

7.0 Marketing and Communications

7.1 Public Information

- 7.1.1. The Program Administrator shall keep all relevant materials updated and posted to the Focus on Energy website and SharePoint sites. Such materials shall include, but not be limited to, Incentive applications, Program descriptions, Incentive reservation balances, fact sheets, contact information for eligible Utilities, and contact information for participating Trade Allies.
- 7.1.2. The Program Administrator and its Implementers and Subcontractors shall follow the Marketing Style Guide developed by the Program Administrator and approved by the Commission for marketing pieces, including press releases, fact sheets, direct mail pieces, program brochures, and other collateral materials.
- 7.1.3. The Program Administrator shall develop a marketing plan template to be used by Implementers and the Program Administrator in order to provide consistent information.
- 7.1.4. The Program Administrator shall develop an umbrella marketing plan for each year during the term of the Agreement and coordinate all Implementer marketing plans. All plans for each calendar year shall be submitted to Commission staff for review and approval by November 15 of the immediately preceding year; except that the umbrella marketing

plan for 2015 shall be submitted to Commission staff by January 31, 2015. Each umbrella marketing plan shall include: key messages, channels, training, strategies, proposed measurement of success, and lists of key memberships or sponsorships proposed, pending Commission approval.

- 7.1.5. The Program Administrator shall forward the Commission staff-approved marketing plans and a campaign calendar for each calendar year to the Utilities by December 15th of the immediately preceding year in order to coordinate marketing activities prior to the start of a new program year. The Program Administrator shall inform the Utilities in writing of any changes to Programs or offerings at least three weeks prior to the changes taking effect.
- 7.1.6. The Program Administrator shall review and be responsible for all content of individual marketing pieces for the Focus on Energy Program, including press releases, fact sheets, direct mail pieces, program brochures, and other collateral materials for style and content.
- 7.1.7. The Program Administrator and all Implementers shall use SPECTRUM for tracking all marketing campaigns.
- 7.1.8. The Program Administrator shall submit an annual list of proposed memberships (in local chambers of commerce, relevant business and trade associations, energy efficiency research organizations, etc.) for each year to the Commission for review and approval by November 15 of the immediately preceding year, except that the list for 2015 shall be submitted by January 31, 2015. Additional membership opportunities which occur during the course of that calendar year must be submitted to the Commission staff for prior review and approval.

8.0 Customer Call Center

- 8.1 The Program Administrator shall operate a customer service center equipped with a toll free number and email addresses to respond to Customer inquiries and direct customers to available energy efficiency resources.
- 8.2 In the operation of the customer service center, the Program Administrator shall utilize the SPECTRUM Customer Service module and shall accurately collect and retain all required information.
- 8.3 During normal business hours (Monday through Friday, 8:00 AM to 5:00 PM Central, excluding official state holidays and Program Administrator corporate holidays) the Program Administrator will answer the toll free number. All customer inquiries made via email or voicemail will be responded to within one (1) business day.
- 8.4 The Program Administrator shall include customer service center usage metrics in its annual reports.

- 9.0 Environmental and Economic Research and Development Program (EERD)
 - 9.1 The Program Administrator shall participate in the RFP process to select EERD projects for funding.
 - 9.2 The Program Administrator shall sign the contracts with grant recipients after EERD research projects have been selected.
 - 9.3 The Program Administrator shall process each such grant recipient's invoice for payment after Commission staff has entered the invoice into SPECTRUM.

ATTACHMENT B

SCOPE OF WORK – BUSINESS PORTFOLIO

In the event of conflict between the provisions of the Main Agreement and this Scope of Work, the provisions in this Scope of Work shall take precedence. Capitalized terms used but not defined herein shall have the meanings given to them in the Main Agreement.

1.0 Introduction

This Scope of Work is for the period of January 1, 2015 through December 31, 2018, concerning the Focus on Energy Business Portfolio administered by the Program Administrator.

1.1 The Program Administrator shall contract with Implementers to implement the Business Portfolio Programs described in Section 4 of this Scope of Work.

2.0 Statutory Purpose and Priorities

2.1 The Program Administrator and its Implementers shall offer Programs that meet the priorities and purposes specified in Wis. Stat. § 196.374(2)(a)2 and (3)(b)1.

2.2 The Program Administrator, through the Business Portfolio, shall meet a portion of the Commission-approved four-year verified Gross Lifecycle Energy Savings and Demand Reduction Goals set forth in Attachment E.

2.3 Benefit/Cost Ratio. The Program Administrator shall ensure that, on an annual and quadrennial basis, the total Business Portfolio of Programs will result in a benefit/cost ratio that is at least equal to one (1.0), using a modified Total Resource Cost (TRC) test that is calculated consistent with the Commission's decisions in the quadrennial planning process II, docket 5-FE-100.

3.0 Work Requirements

3.1 The Program Administrator and its Implementers shall plan, develop, and offer a suite of Business Portfolio Programs to meet the standards in this Statement of Work and the Agreement following the Program plans approved by the Contract Administrator and the Commission.

3.2 The Program Administrator shall oversee the implementation of the Business Portfolio Programs by its Implementers. The core components of oversight include, but are not limited to: 1) tracking and holding all Implementers accountable for energy savings goals; 2) ensuring compliance by all Implementers with established policies and procedures; 3) ensuring coordination of Program offerings and marketing between Programs; 4) tracking costs and budgets within each Program and the entire Business Portfolio; 5) meeting customer satisfaction

goals for each Program and the entire Business Portfolio; and 6) keeping Utilities apprised of Program offerings and changes.

- 3.3 The Program Administrator through its Implementers shall recruit, enroll and engage eligible Trade Allies to work with participating Customers. The Program Administrator has developed standards for Trade Allies to follow in delivering Business Portfolio services for Customers as approved Focus on Energy Trade Allies, and the Program Administrator shall ensure that all Trade Allies comply with these standards. Prospective Focus on Energy Trade Allies shall submit their applications to the Program Administrator, and the Program Administrator shall review and either approve or reject such applications.
- 3.4 At least thirty (30) days before the beginning of each calendar year during the term of this Agreement, the Program Administrator shall prepare and submit to the Commission for review and approval an annual Business Portfolio plan that includes specific Program-level metrics and information. For calendar year 2015, however, the Program Administrator will submit this plan by January 31, 2015. The Program Administrator shall notify the Commission, and obtain Commission approval, before making major changes to the plan.
- 3.5 The Program Administrator shall coordinate Incentive and reward criteria and amounts within Focus on Energy Programs (including but not limited to Business Portfolio Programs) and with other programs offered by the Utilities or the State of Wisconsin for consistency and to maximize the impact of those activities.
- 3.6 The Program Administrator shall ensure that Program standards and guidelines are in place and are met for all Business Portfolio Programs, and shall annually consider improvements to Program standards, guidelines, training, marketing themes and Incentives. The Program Administrator shall actively involve its Implementers and coordinators of non-Focus on Energy programs in program planning and other issues that impact their Programs. The Program Administrator shall consider input from the Contract Administrator, the Commission and other market sources.
- 3.7 The Program Administrator through its Implementers shall, where feasible, standardize prescriptive and custom Incentive amounts across Business Portfolio Program areas to minimize market confusion and simplify the application process for customers.
- 3.8 Should an Implementer seek to present Special Offers (a term which includes, but is not limited to, bonuses, bounties, or giveaways that are limited time offers), it shall submit a proposal to the Program Administrator, using a template designated by the Program Administrator, identifying the terms of the proposed offer, the reasons for that offer, and the projected effects on savings achievement and other Program outcomes. Implementers shall not offer any Special Offers until a proposal has been reviewed and approved by the Program Administrator and

Commission staff. The applicable Implementer shall submit a final report to the Program Administrator within 120 days after each approved Special Offer expires; these reports shall detail how many bonuses, bounties or giveaways were given, the dollar amount of same, the energy savings that resulted from the Special Offer, and such other information that would allow the Commission to evaluate the success or lack thereof of the Special Offer. The Program Administrator shall submit all Special Offer final reports to the Commission.

- 3.9 The Program Administrator through its Implementers shall ensure that all participating customers and energy savings activities are eligible per the applicable Business Portfolio Program requirements before engaging in those activities with such customers.
- 3.10 The Program Administrator through its Implementers shall promote energy-saving projects and technologies that have high energy-savings potential, and use innovative, targeted offerings of cost-effective measures to drive deeper savings per customer interaction (penetration).
- 3.11 The Program Administrator and its Implementers shall coordinate the promotion of Business Portfolio Program offerings to eligible customers through participating Utilities, marketing activities, and cross-Program promotions.
- 3.12 The Program Administrator and its Implementers will track, analyze, and report on participation and other data to offer ongoing improvements to delivery of Focus on Energy Business Portfolio Programs.
- 3.13 The Program Administrator and its Implementers shall document all steps taken to mitigate free-ridership and, as applicable, follow the process for developing a Free-ridership Mitigation Plan as outlined in the 2015-2018 template Implementer Contract.
- 3.14 The Program Administrator shall ensure that its Implementers use the CRM and Marketing functions in SPECTRUM to the maximum degree feasible for effective delivery of their Program(s). Unless given a waiver by the Commission, no other system shall be used by the Program Administrator or any of its Implementers that replicates or overlaps SPECTRUM functionality. This includes but is not limited to storing large amounts of Program data. The Program Administrator shall maintain a list of all software/iPad/databases used by each of the Implementers to access SPECTRUM.
- 3.15 The Program Administrator, and all of its Implementers and Subcontractors which use SPECTRUM, shall each maintain sufficient information technology systems (software, hardware, network speeds, etc.) to enable them to fully access and utilize SPECTRUM. The connectivity speed of the Program Administrator and each of its Subcontractors and Implementers shall be tested semiannually. Any organization whose performance is less than the Policy Manual speed requirement

will be required to repeat the test on a monthly basis until such time as speed meets or exceeds the Policy Manual speed requirement. If the speed requirement is not met by any organization after 6 months of non-compliance, 15% of all future invoice balances otherwise owed to the organization that is not in compliance will be held back until compliance is achieved.

- 3.16 The Program Administrator through its Implementers shall require participating Trade Allies to inform Customers it works with about other Focus on Energy Program offerings.

4.0 Business Portfolio Programs

4.1 Business Incentive Program

4.1.1. The Focus on Energy Business Incentive Program shall provide prescriptive and custom Incentives to support installation of energy efficient and renewable technologies and systems for non-residential customers who do not qualify for the Large Energy Users Program, the Agriculture, Schools and Government Program, or the Chain Stores and Franchises Program. This includes a broad range of facilities, including but not limited to small and medium industrial facilities, office buildings, and commercial spaces.

4.1.2. This Program shall leverage Trade Ally relationships for Program delivery to bolster uptake of custom and prescriptive Incentives.

4.2 Large Energy Users Program

4.2.1. The Large Energy Users Program shall work with large industrial, institutional, and commercial facilities to provide prescriptive and custom Incentives to support installation of energy efficient and renewable technologies and systems.

4.2.2. The Program Administrator through its Implementers shall ensure the customers participating in this Program meet the definition of a Large Energy User. As defined by 2005 Wisconsin Act 141, Large Energy User “means a customer of an energy utility that owns or operates a facility in the energy utility’s service area that has: an energy demand of at least 1,000 kilowatts of electricity per month or of at least 100,000 therms of natural gas per month, and that, in a month, is billed at least \$60,000 for electric service, natural gas service, or both, for all of the facilities of the customer within the energy utility’s service territory.”

4.3 Chain Stores and Franchises Program

4.3.1. The Chain Stores and Franchises Program shall provide prescriptive and custom Incentives to support installation of energy efficient technologies

and systems for customers with five (5) or more facilities or franchise locations within the state of Wisconsin. Chains and franchises must be retail, food service or food sales based. The Program is designed to achieve replicable energy savings by providing in-depth customer service and technical knowledge to Wisconsin retailers who own and/or operate a chain store or franchise facility. The nature of this Program is to help create project implementation decisions at a corporate or aggregate level, and also work with individual franchise owners to influence energy efficiency practices.

4.4 Agriculture, Schools and Government Program

4.4.1. The Agriculture, Schools and Government Program shall provide prescriptive and custom Incentives to support the installation of energy efficient technologies and systems for customers who are Local Units of Government, schools that are funded by tax-payers, and farms and select agricultural businesses in Wisconsin.

4.4.2. The Program Administrator shall ensure that ten percent of the total Focus on Energy Portfolio budget is reserved for agricultural producers and Local Units of Government on an annual basis. If the full ten percent cannot be spent on cost-effective Programs for Local Units of Government and agricultural producers, any surplus funds will be spent on commercial, institutional and industrial customers.

4.5 Design Assistance Program

4.5.1. The Design Assistance Program shall provide prescriptive and custom Incentives to support new energy efficient non-residential construction projects in Wisconsin. This Program will provide customers an analysis of energy saving measures through a web-based tool and customers may pursue either a streamlined building analysis or a detailed whole-building analysis. Customers may either self-direct their project or receive technical support directly through the Program.

4.6 Small Business Program

4.6.1. The Small Business Program shall provide direct installation of energy efficiency measures for small businesses. The Program provides business owners with low-cost options for reducing monthly energy costs through energy efficiency packages, as well as additional measures available at a discounted price. Eligible business owners who participate in this Program will receive a free, onsite energy assessment and recommendations for improving energy efficiency. Customers will also have the option of immediate installation of direct install measures or may elect to upgrade to

a low-cost, co-pay package that will provide additional energy savings measures.

- 4.6.2. The Program Administrator through its Implementers shall ensure the customers participating in this Program meet the definition of a small business and are not eligible for the Chain Stores and Franchises Program or the Agriculture, Schools and Government Program with the exception of municipal buildings in Wisconsin municipalities having a population of less than 7,500. A “small business” is a business with an average peak monthly electric demand of less than 100 kW.

4.7 Programs Using Undesignated Funds

- 4.7.1 The Program Administrator, working with its Implementers, Commission staff, and other Focus on Energy stakeholders, shall develop and deliver the following Programs under the Business Portfolio using the undesignated funds as determined by the Commission during the second Quadrennial Planning Process, docket 5-FE-100:

- 4.7.1 Strategic Energy Management for large energy customers

- 4.7.2 Dairy Digester Program for small farms

- 4.7.3 National Governor’s Association pilot for commercial customers in the Madison Gas and Electric service territory

ATTACHMENT C

SCOPE OF WORK – RESIDENTIAL PORTFOLIO

In the event of conflict between the provisions of the Main Agreement and this Scope of Work, the provisions in this Scope of Work shall take precedence. Capitalized terms used but not defined herein shall have the meanings given to them in the Main Agreement.

1.0 Introduction

This Scope of Work is for the period of January 1, 2015 through December 31, 2018, concerning the Focus on Energy Residential Portfolio administered by the Program Administrator.

1.1 The Program Administrator shall contract with Implementers to implement the Residential Portfolio Programs described in Section 4 of this Scope of Work.

2.0 Statutory Purpose and Priorities

2.1 The Program Administrator and its Implementers shall offer Programs that meet the priorities and purposes specified in Wis. Stat. § 196.374(2)(a)2 and (3)(b)1.

2.2 The Program Administrator, through the Residential Portfolio, shall meet a portion of the Commission-approved four-year verified Gross Lifecycle Energy Savings and Demand Reduction Goals set forth in Attachment E.

2.3 Benefit/Cost Ratio. The Program Administrator shall ensure that, on an annual and quadrennial basis, the total Residential Portfolio of Programs will result in a benefit/cost ratio that is at least equal to one (1.0), using a modified Total Resource Cost (TRC) test that is calculated consistent with the Commission's decisions in the quadrennial planning process II, docket 5-FE-100.

3.0 Work Requirements

3.1 The Program Administrator and its Implementers shall plan, develop, and offer a suite of Residential Portfolio Programs to meet the standards in this Statement of Work and the Agreement following the Program plans approved by the Commission.

3.2 The Program Administrator shall oversee the implementation of the Residential Portfolio Programs by its Implementers. The core components of oversight include, but are not limited to: 1) tracking and holding all Implementers accountable for energy savings goals; 2) ensuring compliance by all Implementers with established policies and procedures; 3) ensuring coordination of Program offerings and marketing between Programs; 4) tracking costs and budgets within each Program and the entire Residential Portfolio; 5) meeting customer

satisfaction goals for each Program and the entire Residential Portfolio; and 6) keeping Utilities apprised of Program offerings and changes.

- 3.3 The Program Administrator through its Implementers will recruit, enroll and engage eligible Trade Allies to work with participating Customers. The Program Administrator has developed standards for Trade Allies to follow in delivering Residential Portfolio services for Customers as approved Focus on Energy Trade Allies, and the Program Administrator shall ensure that all Trade Allies comply with these standards. Prospective Focus on Energy trade allies shall submit their applications to the Program Administrator, and the Program Administrator shall review and either approve or reject such applications.
- 3.4 The Program Administrator through its Implementers shall require participating Trade Allies to inform Customers it works with about other Focus on Energy Program offerings.
- 3.5 At least thirty (30) days before the beginning of each calendar year during the term of this Agreement, the Program Administrator shall prepare and submit to the Commission for review and approval an annual Residential Portfolio plan that includes specific Program-level metrics and information. For calendar year 2015, however, the Program Administrator will submit this plan by January 31, 2015. The Program Administrator shall notify the Commission, and obtain Commission approval, before making major changes to the plan.
- 3.6 The Program Administrator shall coordinate Incentive and reward criteria and amounts within other Focus on Energy Programs (including but not limited to Residential Portfolio Programs) and with other programs offered by the Utilities or the State of Wisconsin for consistency and to maximize the impact of those activities.
- 3.7 The Program Administrator shall ensure that Program standards and guidelines are in place and are met for all Residential Portfolio Programs, and shall annually consider improvements to Program standards, guidelines, training, marketing themes and Incentives. The Program Administrator shall actively involve its Implementers and coordinators of non-Focus on Energy programs in program planning and other issues that impact their Programs. The Program Administrator shall consider input from the Contract Administrator, the Commission and other market sources.
- 3.8 The Program Administrator and its Implementers will track, analyze, and report on participation and other data to offer ongoing improvements to delivery of Focus on Energy Residential Portfolio Programs.
- 3.9 The Program Administrator through its Implementers shall ensure that all participating customers and energy savings activities are eligible per the

applicable Residential Portfolio Program requirements before engaging in those activities with such customers.

- 3.10 The Program Administrator and its Implementers shall document all steps taken to mitigate free-ridership and, as applicable, follow the process for developing a Free-ridership Mitigation Plan as outlined in the 2015-2018 template Implementer Contract.
- 3.11 Should an Implementer seek to present Special Offers (a term which includes, but is not limited to, bonuses, bounties, or giveaways that are limited time offers), it shall submit a proposal to the Program Administrator, using a template designated by the Program Administrator, identifying the terms of the proposed offer, the reasons for that offer, and the projected effects on savings achievement and other Program outcomes. Implementers shall not offer any Special Offers until a proposal has been reviewed and approved by the Program Administrator and Commission staff. The applicable Implementer shall submit a final report to the Program Administrator within 120 days after each approved Special Offer expires; these reports shall detail how many bonuses, bounties or giveaways were given, the dollar amount of same, the energy savings that resulted from the Special Offer, and such other information that would allow the Commission to evaluate the success or lack thereof of the Special Offer. The Program Administrator shall submit all Special Offer final reports to the Commission.
- 3.12 The Program Administrator shall ensure that its Implementers use the CRM and Marketing functions in SPECTRUM to the maximum degree feasible for effective delivery of their Program(s). Unless given a waiver by the Commission, no other system shall be used by the Program Administrator or any of its Implementers that replicates or overlaps SPECTRUM functionality. This includes but is not limited to storing large amounts of Program data. The Program Administrator shall maintain a list of all software/iPad/databases used by each of the Implementers to access SPECTRUM.
- 3.13 The Program Administrator, and all of its Implementers and Subcontractors which use SPECTRUM, shall each maintain sufficient information technology systems (software, hardware, network speeds, etc.) to enable them to fully access and utilize SPECTRUM. The connectivity speed of the Program Administrator and each of its Implementers and Subcontractors shall be tested semiannually. Any organization whose performance is less than the Policy Manual speed requirement will be required to repeat the test on a monthly basis until such time as speed meets or exceeds the Policy Manual speed requirements. If the speed requirement is not met by any organization after 6 months of non-compliance, 15% of all future invoice balances otherwise owed to the organization that is not in compliance will be held back until compliance is achieved.
- 3.14 The Program Administrator through its Implementers shall promote energy-saving projects and technologies that have high energy-savings potential, and use

innovative, targeted offerings of cost-effective measures to drive deeper savings per customer interaction (penetration).

- 3.15 The Program Administrator and its Implementers shall coordinate the promotion of Residential Portfolio Program offerings to eligible customers through participating Utilities, marketing activities, and cross-Program promotions.

4.0 Residential Portfolio Programs

4.1 Appliance Recycling Program

- 4.1.1. The Program Administrator through its Implementers will offer qualifying customers a free collection and recycling service of older, functioning refrigerators and freezers. Participating customers will also receive a financial reward.

- 4.1.2. The Program Administrator, through its Implementers, will require collection crews picking up units to ask customers a short series of questions to identify opportunities for other Focus on Energy Program energy savings. The information from these questions will be made available to other Focus on Energy Program Subcontractors and Implementers.

4.2 Assisted Home Performance with ENERGY STAR® Program

- 4.2.1. The Program Administrator through its Implementers shall ensure the customers participating in this Program are income-eligible. Customers that have household incomes, unless otherwise specified by Program Administrator after consulting with Commission staff, between sixty percent (60%) to eighty percent (80%) of State Median Income (SMI) are eligible for this Program.

- 4.2.2. The Program Administrator through its Implementers will require that a participating Customer has an abbreviated energy assessment performed by an eligible Trade Ally.

- 4.2.3. The Program Administrator through its Implementers will require the Trade Ally to input the information collected during the assessment and recommended measures into a standard reporting tool and then present a standard report and proposal generated from the tool to the Customer with recommended energy savings measures. The Trade Ally will provide the direct install measures at the time of the energy assessment unless declined by the Customer.

- 4.2.4. The Program Administrator through its Implementers will provide Incentives to participating customers that move forward with the recommended energy saving measures.

4.3 Express Energy Efficiency Program

- 4.3.1. The Express Energy Efficiency Program is designed to educate customers about energy savings opportunities and to achieve savings through direct install measures. The program will result in installation of low-cost measures in single family homes throughout Wisconsin, at no cost to the customer.
- 4.3.2. The Program Administrator through its Implementers will implement this Program in predetermined geographic areas around the state in participating Utility territories.
- 4.3.3. The Program Administrator through its Implementers will use the direct install visits to collect information on the customer's house which can then be used to refer the customer to other Focus on Energy Programs.
- 4.3.4. The Program Administrator through its Implementers will recruit, enroll and engage eligible trade allies to work with participating customers in areas of the state where the Program is not actively operating. This is to encourage participation across the state without excessive scheduling delay.

4.4 Enhanced Rewards

- 4.4.1. The Enhanced Rewards Program is designed to provide prescriptive Incentives to single family residential customers for the purchase and installation of eligible energy savings measures. These Incentives will help reduce the purchase price so that customers are motivated to make investments in long-term energy savings for their homes.
- 4.4.2. The Program Administrator through its Implementers shall ensure the customers participating in this Program meet the income qualifications of an eligible customer. "Eligible customers" for this Program are single family customers of participating Utilities that have household incomes, unless otherwise specified by Program Administrator after consulting with Commission staff, between sixty percent (60%) to eighty percent (80%) of State Median Income (SMI).

4.5 Home Performance with ENERGY STAR Program

- 4.5.1. The Home Performance with ENERGY STAR Program is designed to educate customers about energy savings opportunities through audits and to achieve savings through comprehensive retrofits and direct install measures. The Program will result in the installation of cost-effective measures in single family homes throughout Wisconsin.

- 4.5.2. The Program Administrator through its Implementers will require that a participating customer has an abbreviated energy assessment performed by an eligible trade ally.
- 4.5.3. The Program Administrator through its Implementers will require the trade ally to input the information collected during the assessment and recommended measures into a standard reporting tool and then present a standard report and proposal generated from the tool to the customer with recommended energy saving measures. The trade ally will provide the direct install measures at the time of the energy assessment unless declined by the customer.
- 4.5.4. The Program Administrator through its Implementers will provide Incentives to participating customers that move forward with the recommended energy saving measures.

4.6 Multifamily Direct Install Program

- 4.6.1. The Multifamily Direct Install Program is designed to educate multifamily building owners, renters, managers and condominium owners about energy savings opportunities and to achieve savings through direct install of low cost measures at no cost to the customer.
- 4.6.2. This Program will target apartment or condominium complexes of four or more units. Recruitment efforts will target property management companies to secure agreements to treat multiple properties through a single point of contact.

4.7 Multifamily Energy Savings Program

- 4.7.1. The Multifamily Energy Savings Program is designed to educate multifamily building owners, renters, managers and condominium owners about energy savings opportunities and to achieve savings through prescriptive and custom measures.
- 4.7.2. This Program will target apartment or condominium complexes of four or more units. Recruitment efforts will target property management companies to secure agreements to treat multiple properties through a single point of contact.
- 4.7.3. The Program Administrator through its Implementers will provide a participating customer with an energy assessment describing energy savings opportunities and prescriptive and custom Incentives for which the customer is eligible. In addition, a customer may request, for a fee, to receive custom calculations to determine more precise cost and savings opportunities.

4.8 New Homes Program

- 4.8.1. The New Homes Program is designed to provide services to participating new home builders and homebuyers of one to three-unit residential dwellings of three stories or less. This Program will help customers understand the value provided by Program homes, including energy efficiency, comfort, durability, and safety.
- 4.8.2. The Program Administrator through its Implementers shall promote and support targeted education and training efforts to drive participation. Education and training shall include both technical and non-technical training as well as field support to develop expertise and efficiency in Program providers.
- 4.8.3. The Program Administrator through its Implementers shall support and promote renewable energy technologies in new construction by enabling builders to render a home ready for renewable energy technology at time of construction. Renewable energy measures will be coordinated with the Residential Rewards Program.

4.9 Residential Rewards Program

- 4.9.1. The Residential Rewards Program is designed to provide prescriptive Incentives to single family residential customers for the purchase and installation of eligible energy savings measures. These Incentives will help reduce the purchase price so that customers are motivated to make investments in long-term energy savings for their homes. The Residential Rewards Program has three components: Home Heating, Home Energy Improvements, and Renewable Energy. The Home Heating component provides Incentives to eligible customers who purchase high-efficiency equipment such as gas furnaces and boilers. The Home Energy Improvements component provides Incentives to customers for installing attic insulation. The Renewable Energy component provides Incentives to customers for installing renewable energy technologies.

4.10 Retailer Lighting and Appliance Program

- 4.10.1. The Retailer Lighting and Appliance Program will promote, through support of retailers, the sale and purchase of ENERGY STAR lighting products and other energy savings products by providing Incentives at the point of sale. This Program is a retail-based promotion targeted to Wisconsin customers in an effort to reduce system kW and kWh.
- 4.10.2. The Program Administrator through its Implementers shall develop and support partnerships with manufacturers, distributors, suppliers and retailers of ENERGY STAR lighting and other energy efficient products

for the residential market specifically targeting those opportunities that ensure lift in product sales.

4.10.3. The Program Administrator through its Implementers shall provide education and training for participating retailers to promote the ENERGY STAR label and benefits. This will include retailer training to improve their sales effectiveness.

4.10.4. The Program Administrator through its Implementers shall work with lighting manufacturers and retailers to report sales and/or shipping data of measures in an effort to establish market share in Wisconsin.

4.11 Programs for Use of Undesignated Funds

4.11.1 The Program Administrator shall consult with Focus on Energy stakeholders and work with Commission staff to develop proposals and design a Program(s) under the Residential Portfolio for using the \$2.3 million in undesignated funds as determined by the Commission during the second Quadrennial Planning Process, docket 5-FE-100.

ATTACHMENT D

COMPENSATION, PAYMENT, AND PERFORMANCE BONUS

Capitalized terms used but not defined herein shall have the meanings given to them in the Main Agreement. The Contract Administrator shall compensate the Program Administrator for satisfactory performance of this Agreement as follows:

1.0 Total Payments

The maximum amount to be paid by the Contract Administrator under this Agreement for the period beginning on January 1, 2015 and ending on December 31, 2018 consists of **\$398,400,000** for eligible administrative and program costs and expenses, of which not more than **\$30,800,000** shall constitute the Professional Fee, which shall (subject to the Performance Bonus provisions of this Attachment D) be Program Administrator's sole and exclusive compensation for satisfactory performance of all of the Work.

- 1.1 The Professional Fee for the period beginning on January 1, 2015 and ending on December 31, 2018 includes an amount not to exceed **\$28,800,000** for the core Focus on Energy Programs. This compensation is for performance of the Work described in the Main Agreement and the Management and Operations Scope of Work (Attachment A), the Business Portfolio Scope of Work (Attachment B), and Residential Portfolio Scope of Work (Attachment C). The remaining **\$2,000,000** of the Professional Fee is for administrative Work on Commission-approved Programs using undesignated funds (see Table 1). Only eligible charges may be paid as part of the Professional Fee, as described in Section 2.0 below; non-eligible charges shall not be paid or reimbursed to the Program Administrator.
- 1.2 Any Focus on Energy implementation funds budgeted to be expended during 2015 or a subsequent program year (see the Focus on Energy Budget – Table 1, below) but not expended during that year may be carried over to the subsequent program year which begins on January 1 of the following year, but only if this Agreement remains in effect on January 1 of the following year. In the case of any such carryover of implementation funds, the Commission reserves the right to decide how such funds will be allocated, and in the case of such a carryover from 2014 to 2015, the Commission also reserves the right to adjust the goals in Attachment E on a proportional basis based upon the carried-over funds. On or before November 15 of each program year, the Program Administrator shall inform the Commission of the estimated amount of unspent budgeted Focus on Energy dollars (if any) as of December 31 of that program year (this includes administration, implementation and all other budgeted Focus on Energy amounts). The Commission, with input from the Program Administrator, will determine how any such unspent implementation dollars will be allocated, and if and

how any such unspent administration dollars will be allocated, in the following program year.

2.0 Eligible Charges

- 2.1 The Program Administrator shall be compensated for reasonable and appropriate services provided and eligible costs and expenses incurred in order to perform the Work, as described in this Section 2.0. Eligible costs and expenses (i.e., those costs and expenses that are eligible for reimbursement as part of the Professional Fee), as well as non-eligible costs and expenses, shall be as set forth in the Policy Manual, as it may be modified from time to time with prior Commission approval. Notwithstanding anything to the contrary herein, the Program Administrator shall only bill, and shall only be paid for, the following: its labor at Commission-approved rates, charges from Commission-approved Subcontractors under Commission-approved subcontracts, and expenses identified and set forth in a Commission-approved umbrella marketing plan.
- 2.2 Compensation for the Work will be provided as follows. Charges for the Work performed by the Program Administrator will be computed in accord with the then-current Commission-approved Program Administrator labor rates, using the applicable and substantiated number of hours spent by Program Administrator's employees working directly on the Work. Program Administrator's approved hourly labor rate schedule is incorporated herein on Exhibit 1 to this Attachment D. If the Program Administrator desires to amend this rate schedule during the term of the Agreement, it must provide the proposed amended schedule to the Commission for review and approval by no later than November 1 of the year prior to the program year in which the amended rate schedule is proposed to take effect. Changes to the rate schedule shall not change any aspect of the Focus on Energy budget. In addition to labor Work performed directly by Program Administrator employees, the Professional Fee shall also compensate the Program Administrator for (i) reasonable, appropriate and substantiated charges from its Commission-approved Subcontractors (such as marketers or attorneys providing legal services to the Program Administrator in direct support of the Work) for their performance of Work that is eligible for reimbursement as set forth in the Policy Manual, and (ii) any and all reasonable, appropriate and substantiated expenses within a Commission-approved umbrella marketing plan (including but not limited to marketing, equipment and/or training) incurred by the Program Administrator that are directly attributable to performing the Work and are eligible for reimbursement as set forth in the Policy Manual.
- 2.2.1 The budget amounts for the maximum Professional Fees payable to the Program Administrator are detailed below in the Focus on Energy Budget – Table 1, under the headings “Core Program Administration” and

“Undesignated Programs Administration”. If the Program Administrator desires to make any modifications to the Professional Fees budget or any other aspect of the Focus on Energy Budget, such proposed modification(s) must be submitted to the Contract Administrator and the Commission for review by no later than November 1 of the year prior to the program year whose budget is proposed to be modified. No such budget modification shall take effect unless and until it has been approved by the Commission and the Contract Administrator. Note that the budgeted amounts set forth in Table 1 are maximum amounts, not fixed payment amounts. As a result, if the substantiated and eligible Professional Fees for a program year are less than the budgeted Professional Fees for that program year under the headings “Core Program Administration” and “Undesignated Programs Administration” of Table 1, the amount of the excess will not be paid to the Program Administrator; however, if the Program Administrator so requests and the Commission so approves, such excess may be added to the budget for Professional Fees in a subsequent program year.

- 2.3 Other compensation provisions are as follows: Invoices for Professional Fees (covering labor Work performed by the Program Administrator, Work performed by Program Administrator’s approved Subcontractors, and expenses identified within a Commission-approved umbrella marketing plan incurred by the Program Administrator in performing the Work), together with appropriate substantiation of all charges, will be submitted by the Program Administrator on a monthly basis in arrears in accordance with the provisions of Section 5.0 below. There shall be no mark-up on charges from Subcontractors or on out-of-pocket costs and expenses. Only the Program Administrator and Subcontractors’ labor hours associated with travel related to necessary program operations is chargeable to Focus on Energy; no travel time for commutes between Program Administrator’s offices shall be charged by or paid to the Program Administrator or any of its Subcontractors. In no event shall any of Program Administrator’s travel-related expenses (for example, mileage, meals, lodging, etc.) be charged by or paid to the Program Administrator. Invoices for Implementers, if any, together with appropriate substantiation will be submitted by Program Administrator on a monthly basis in arrears in accordance with the provisions of Section 5.0. Invoices for Customer Incentives, if any, together with appropriate substantiation, may be submitted by Program Administrator twice per month in accordance with the provisions of Section 5.0.
- 2.3.1 Program Administrator shall be responsible for payment of all Subcontractors pursuant to approved subcontractor agreements and purchase orders.
- 2.3.2 The Contract Administrator shall be responsible for payment for services provided by Implementers in implementing Focus on Energy Programs.

- 2.4 Payment shall be made in U.S. Dollars. Fiscal Agent, on behalf of the Contract Administrator, shall be responsible for payment (without deduction or offset from the total invoice amount) of any and all sales, use, value added, gross receipts, franchise and like taxes, and tariffs and duties, and all disposal fees and taxes, levied against Program Administrator by any government or taxing authority on the performance of the Work under this Agreement for which an exemption is not available; but the Program Administrator shall be responsible for income taxes levied upon it and all employment-related taxes associated with its employees. A service charge equal to one and one-half percent (1½ %) per month, or the maximum rate permitted by law, whichever is less, will be added to all undisputed accounts which remain unpaid for more than thirty (30) calendar days beyond the date the applicable invoice was due to be paid. Should there be any dispute as to any portion of an invoice, the undisputed portion shall be promptly paid.
- 2.5 Should the Compliance Agent find that (i) the Program Administrator has invoiced the Focus on Energy Program for a non-reimbursable charge, cost or expense, or has otherwise overcharged Focus on Energy or the Contract Administrator, or (ii) the Program Administrator has invoiced the Focus on Energy Program for charges, costs or expenses that the Compliance Agent is unable to substantiate, then upon request of the Commission, the Program Administrator shall reimburse the Focus on Energy Program for the amount in question by a credit or correction on its next invoice or by submitting a check to the Fiscal Agent, made payable to the Contract Administrator.
- 2.6 Notwithstanding anything to the contrary herein, in no event shall the Program Administrator invoice or be paid Professional Fees for any program year in excess of the approved budgeted maximum Professional Fees for that program year, as set forth in the Focus on Energy Budget – Table 1 (as it may be modified with the approval of the Commission and the Contract Administrator), even if eligible labor charges, charges for Work performed by Subcontractors, and out-of-pocket costs and expenses identified within a Commission-approved umbrella marketing plan incurred by the Program Administrator in performing the Work for or during that program year exceed said budgeted maximum Professional Fees for that program year.
- 3.0 Not to Exceed Budgets By Year
- 3.1 For the period of January 1, 2015 through December 31, 2018, and for each program year (which is a calendar year) within that period, the maximum amounts payable by the Contract Administrator under this Agreement are those identified in Table 1 below. Each of these budgets (i.e., each dollar amount for each program year under each of the headings “Core Program Administration”, “Core Program Implementation”, “EERD Budget”, “Undesignated Programs Administration” and “Undesignated Programs Implementation” in Table 1) shall not be exceeded by the Program Administrator unless the Program Administrator

is granted prior written approval from the Contract Administrator and the Commission to exceed the applicable limit(s).

Focus on Energy Budget– Table 1.

Program Year	Core Program Administration	Core Program Implementation	EERD Budget	Undesignated Programs Administration	Undesignated Programs Implementation	Total
January 1, 2015 to December 31, 2015	\$7,200,000	\$84,800,000	\$100,000	\$1,000,000	\$14,000,000 ¹	\$107,100,000
January 1, 2016 to December 31, 2016	\$7,200,000	\$84,800,000	\$100,000	\$1,000,000	\$14,000,000 ¹	\$107,100,000
January 1, 2017 to December 31, 2017	\$7,200,000	\$84,800,000	\$100,000	0	0	\$92,100,000
January 1, 2018 to December 31, 2018	\$7,200,000	\$84,800,000	\$100,000	0	0	\$92,100,000
TOTAL	\$28,800,000*	\$339,200,000	\$400,000	\$2,000,000	\$28,000,000	\$398,400,000

¹Per the Commission's Order in docket 5-FE-100, the Undesignated Program Budgets total \$30 million, which was spread over two years and includes: \$10 million for the Renewable Loan Program; \$9.3 for the SEM Pilot Program; \$6.4 million for the Dairy Digester Program; \$2 million for the NGA Pilot Program; and \$2.3 million to be determined by 12/31/14.

* The amounts for Core Program Administration do not include the amount of any bonus earned by the Program Administrator for the 2011-2014 Quadrennium, even though any such bonus would be paid in 2015.

- 3.2 In the event that the Program Administrator spends in one program year less than its Commission-approved budget for that year under the headings "Core Program Implementation", "EERD Budget" or "Undesignated Programs Implementation", the amount of the excess will be taken into account in the budgeting process for the following year; with Commission approval, any such unspent excess funds within a given year may be rolled into the subsequent program year. The Commission and the Contract Administrator, with input from the Program Administrator, will determine how such unspent dollars will be allocated.
- 3.3 The invoice format to be used by the Program Administrator shall be established by the Program Administrator and approved by the Commission by January 15, 2015. No modifications to this format shall be made unless pre-approved by the Commission. The Program Administrator shall require that any and all invoices to

the Program Administrator from its Subcontractors and Implementers, at a minimum, conform to the Program Administrator's invoice requirements identified above and to any format and requirements established by the Commission.

4.0 Performance Bonus Mechanism

- 4.1 The Program Administrator and the Contract Administrator agree that the Program Administrator shall be eligible for a performance bonus depending upon the Program Administrator's performance in achieving the Contract Administrator's objectives and successfully delivering the strategies and initiatives described in the Scopes of Work for the Business and Residential Portfolio Programs. The performance bonus mechanism is designed to reward superior performance by the Program Administrator and its Implementers and Subcontractors in the overall administration and delivery of energy efficiency services that achieve specific resource acquisition and customer service goals. In contrast, if the performance of the Program Administrator and its Implementers and Subcontractors is inadequate, no performance bonus will be payable, and the Program Administrator may be required to refund a portion of the Professional Fees, as described below.
- 4.2 The Program Administrator's eligibility to earn a performance bonus is contingent on achievement of two Minimum Performance Requirement (MPR) standards, as follows:
- a. Meet or exceed each of the following four goals established in Section 2.0 of Attachment E: the four-year verified gross lifecycle Total MMBtu energy savings goal, and the "90% Threshold" values for verified gross lifecycle savings for both kWh and therms in the table in said Section 2.0, and the verified gross lifecycle demand reduction goal (kW) in the "Verified Gross Lifecycle Goals" column of the table in said Section 2.0. Based on the content of Attachment E as of the Effective Date, these values are as follows:

MMBtu:	≥ 262,618,907 MMBtu
kWh:	≥ 27,384,117,405 kWh
Therms:	≥ 1,429,224,074 Therms
kW:	≥ 413,122 kW
 - b. Meet or exceed the key performance indicator ("KPI") for customer satisfaction. The Evaluator, with consultation from the Program Administrator and approval by the Commission, shall establish the baseline for customer satisfaction by no later than May 30, 2016, based on data collected during calendar year 2015. The established baseline will be equivalent to the KPI utilized to measure this MPR over the

2015-2018 Quadrennium. The Evaluator will determine whether the KPI has been achieved by the Program Administrator.

- 4.3 Within 30 days after the 2018 program year verified gross energy savings results are determined by the Evaluator (expected to occur in May 2019), and using the KPI achievement results provided by the Evaluator, the Contract Administrator and Commission will determine if either or both of the two MPRs have been met and notify the Program Administrator of the results of those determinations. If the Program Administrator does not meet both of the two MPRs, the Program Administrator is not eligible for any performance bonus, and if neither MPR is met, the Program Administrator may be required to refund a portion of the Professional Fees, per the criteria in the table below.

Performance Bonus Criteria – Table 2	
Performance	Result
Achieves both of the MPRs.	Eligible for performance bonus of up to \$500,000, <u>if</u> the requirements set forth in Section 4.4 below are met
Achieves one MPR, but does not achieve the other MPR; OR does not achieve <u>either</u> MPR, but achieves at least <u>four or five</u> of the following: (i) more than 90% of the verified gross lifecycle Total MMBtu savings goal in the table in Section 2.0 of Attachment E, (ii) more than 90% of the “90% Threshold” value for verified gross lifecycle kWh savings in the table in Section 2.0 of Attachment E, (iii) more than 90% of the “90% Threshold” value for verified gross lifecycle therms savings in the table in Section 2.0 of Attachment E, (iv) more than 90% of the verified gross lifecycle kW goal in the “Verified Gross Lifecycle Goals” column of the table in Section 2.0 of Attachment E, and (v) 90% or more of the customer satisfaction KPI.	No performance bonus and no refund of Professional Fees
Does not achieve either MPR, and achieves <u>only two or three</u> of the following: (i) more than 90% of the verified gross lifecycle Total MMBtu savings goal in the table in Section 2.0 of Attachment E, (ii) more than 90% of the “90% Threshold” value for verified gross lifecycle kWh savings in the table in Section 2.0 of Attachment E, (iii) more than 90% of the “90% Threshold” value for verified gross lifecycle therms savings in the table in Section 2.0 of Attachment E, (iv) more than 90% of the verified gross lifecycle kW	Must refund \$250,000 of Professional Fees due to inadequate performance

<p>goal in the “Verified Gross Lifecycle Goals” column of the table in Section 2.0 of Attachment E, and (v) 90% or more of the customer satisfaction KPI.</p>	
<p>Does not achieve either MPR, and achieves <u>only one or none</u> of the following: (i) more than 90% of the verified gross lifecycle Total MMBtu savings goal in the table in Section 2.0 of Attachment E, (ii) more than 90% of the “90% Threshold” value for verified gross lifecycle kWh savings in the table in Section 2.0 of Attachment E, (iii) more than 90% of the “90% Threshold” value for verified gross lifecycle therms savings in the table in Section 2.0 of Attachment E, (iv) more than 90% of the verified gross lifecycle kW goal in the “Verified Gross Lifecycle Goals” column of the table in Section 2.0 of Attachment E, and (v) 90% or more of the customer satisfaction KPI.</p>	<p>Must refund \$500,000 of Professional Fees due to inadequate performance</p>

As of the Effective Date, for purposes of clauses (i) through (iv) in the above table, the 90% values of the various measurements are as follows:

- MMBtu: 236,357,016 MMBtu
- kWh: 24,645,705,665 kWh
- Therms: 1,286,301,667 Therms
- kW: 371,810 kW

4.4 If the calculations performed under Section 4.3 and Table 2 establish that the Program Administrator is eligible for a performance bonus for the period January 1, 2015 through December 31, 2018, the Evaluator shall determine whether Focus on Energy has met the Commission’s goals for cumulative net first-year savings for kWh and/or therms and/or kW for the 2015-2018 Quadrennium, as set forth in Section 1.0 of Attachment E. In this situation, the Program Administrator shall be eligible to earn a performance bonus with respect to performance in kWh and/or therms and/or kW savings, with the bonus weighted to reflect the Commission’s decision to place more emphasis on energy savings versus demand. The bonus for each of the three indicators will be calculated separately, so performance on one indicator will not influence the potential of earning a performance bonus for either of the other two indicators. The weighting for each of the three indicators is as follows:

- a. kWh is 40% of the maximum bonus ($\$500,000 * 0.40 = \mathbf{\$200,000}$)
- b. Therms is 40% of the maximum bonus ($\$500,000 * 0.40 = \mathbf{\$200,000}$)
- c. kW is 20% of the maximum bonus ($\$500,000 * 0.20 = \mathbf{\$100,000}$)

For example, if the Evaluator determines that Focus on Energy has met the Commission's goals for kWh and kW but not therms, the Program Administrator will receive a performance bonus equal to \$300,000 (\$200,000 plus \$100,000). In those situations in which the Program Administrator earns a performance bonus, the Evaluator shall notify the Program Administrator of the amount of that bonus at the same time it gives the Program Administrator the notice described in Section 4.3.

The Program Administrator shall pay at least 50 percent of the final bonus amount that it earns (if any) to those employees of the Program Administrator who (i) worked at least one year during the 2015-2018 Quadrennium on the Focus on Energy Program, and (ii) worked over 80 percent of their billable hours on the Focus on Energy Program and also worked at least 90 percent of their billable hours on Focus on Energy while located in Wisconsin, and (iii) are still employed by the Program Administrator at the time the bonus is paid to the Program Administrator. The remainder of the final bonus amount that the Program Administrator earns (if any) shall be retained by the Program Administrator.

- 4.5 The Program Administrator will have ten (10) calendar days from its receipt of notification of the results of the performance-related determinations made under Section 4.3 (and if applicable, Section 4.4) to request in writing clarification and a second review by the Contract Administrator and Commission. If no such request is made by the Program Administrator within such 10-day period, the results will be considered final.
- 4.6 If the Program Administrator is due a performance bonus, within 30 days after notification of the results of the determinations made under Sections 4.3 and 4.4, the Program Administrator will submit to the Commission an invoice for the bonus amount, with such invoice to be paid on 60 day net payment terms. If as a result of the performance-related determinations, the Program Administrator is required to refund a portion of the Professional Fees, the Commission will submit to the Program Administrator an invoice for the applicable amount established pursuant to Section 4.3, with such invoice to be paid to the Contract Administrator on 60 day net payment terms.

5.0 Invoice Review and Approval

- 5.1 The Program Administrator shall submit all invoices, together with appropriate substantiation, to the Commission for approval in accordance with the invoice submittal timeline for the program year in question as established by the Commission in consultation with the Fiscal Agent. The Commission, no later than five (5) business days after receipt of each invoice, will review the invoice and either approve the invoice for payment or notify the Program Administrator in writing of any disputed amount and the basis for such dispute. Any undisputed amounts shall be approved for payment by the Commission.

- 5.2 Unless and until notified of a different (or additional) address, as provided herein, the Program Administrator shall submit invoices electronically for review and approval through the SPECTRUM system for Commission staff approval.
- 5.3 If an invoice is disputed by the Commission, the Program Administrator shall answer the Commission's concerns in writing within five (5) business days of its receipt of the written dispute notice from the Commission. If the Commission and the Program Administrator cannot resolve the dispute within ten (10) business days after the Commission's receipt of the Program Administrator's answer, the Commission and the Program Administrator shall attempt to resolve the dispute in a written request to the Contract Administrator. If the Contract Administrator and the Program Administrator cannot resolve the dispute within ten (10) business days after the Contract Administrator's receipt of the written request, they will attempt in good faith for sixty (60) days to resolve the dispute through mediation. If the dispute is not resolved through mediation, it shall be resolved through litigation in one of the courts specified in Paragraph 28 of the Main Agreement.
- 6.0 Payment of Invoices
- 6.1 Approved invoices will be forward by the Commission to the Fiscal Agent for payment. Disbursements for all approved invoices will be made by the Fiscal Agent by the applicable date identified in the check run schedule for the program year in question that has been established by the Commission in consultation with the Fiscal Agent.
- 6.2 The invoice submittal timeline and check run schedule for each program year to be established by the Commission in consultation with the Fiscal Agent will take into account the Fiscal Agent's preferred dates of disbursement, the five (5) business days required by the Commission for review and approval of invoices, and the two (2) business days required by the Fiscal Agent to complete an electronic funds transfer or cut checks.
- 7.0 Budget-Shifting Between the Residential Portfolio and Business Portfolio
- 7.1 No budget shift from the Residential Portfolio to Business Portfolio or vice-versa shall be made without prior written authorization from the Commission.
- 8.0 Fund-Shifting Within Residential Portfolio or Business Portfolio Programs
- 8.1 Budget shifts between Programs, Implementers, the Implementers' subcontractors, and contractual budget line items is allowed within the Residential Portfolio or within the Business Portfolio without specific prior written authorization from the Commission.
- 8.2 The Program Administrator will document, on a template provided by the Commission, each budget shift at the Program level and deliver this

document to the Commission. The Commission may flag any such budget shifts for review by contacting the Program Administrator within five (5) business days after its receipt of the applicable budget shift document and, in this case, any such shift will not take effect unless and until Commission approval is provided.

- 8.3 If the Commission does not contact the Program Administrator within five (5) business days of a budget shift document being delivered, the Program Administrator shall assume the shift described in that document is approved.

9.0 Reliance by the Commission on Representations

- 9.1 All payments by the Fiscal Agent under this Agreement will be made in reliance upon the accuracy of all prior representations by the Program Administrator and of all substantiation of invoices provided by the Program Administrator, including but not limited to bills, invoices, progress reports and other proofs of Work. The Program Administrator represents that all such substantiation furnished with each invoice submitted hereunder shall be accurate and not misleading.

10.0 Suspension of Payment to the Program Administrator

- 10.1 In addition to its other remedies, the Contract Administrator reserves the right to suspend any or all payments to the Program Administrator if required reports or deliverables are not provided to the Commission or its designated representatives or the Contract Administrator on a timely basis; if there are continuing deficiencies in the Program Administrator's reporting, record keeping, or invoicing responsibilities and requirements; if there are continuing deficiencies in the performance of the Work; or if the performance of the Work is not adequately evidenced.

**EXHIBIT 1
BILLING RATE TABLE**

Focus on Energy Title	Rate
Managing Director	\$ 247.20
Program Director	\$ 206.00
Director of Operations	\$ 185.40
Director	\$ 175.10
Manager	\$ 164.80
Senior Program Lead	\$ 133.90
Program Lead	\$ 123.60
Senior Program Engineer	\$ 144.20
Program Engineer	\$ 123.60
Business Analyst	\$ 113.30
Marketing & Communications Specialist	\$ 113.30
Customer Service Representative	\$ 82.40

ATTACHMENT E

2015-2018 NET ANNUAL AND VERIFIED GROSS LIFECYCLE GOALS

In the event of a conflict between the provisions of the Main Agreement and this Attachment E, the provisions in this Attachment E shall take precedence. Capitalized terms used but not defined herein shall have the meanings given to them in the Main Agreement.

1.0 Introduction

The Commission has determined the following net annual energy savings and demand reduction goals for the cumulative period of 2015-2018:

	Cumulative Net First-Year Goals for 2015-2018
kW	312,467
kWh	2,137,142,988
Therms	76,911,727

2.0 The Commission determined that Program Administrator contract goals for demand savings and energy savings shall be set as gross lifecycle goals. The Commission’s cumulative net first-year goals shall be converted to gross lifecycle goals using historical Focus on Energy data on measure lifetimes and net-to-gross ratios. The Commission also determined that gross lifecycle goals for energy savings shall be set as an overall MMBtu energy savings goal, with minimum kWh and therm thresholds set equal to 90 percent of the overall goals for kWh and therms, respectively. These goals are shown in the table below. Section 4.0 of Attachment D sets forth the provisions dealing with the determination of whether the Program Administrator has met these goals. For purposes of clarity, in order for the Program Administrator to be eligible for a performance bonus, the Program Administrator must (in addition to meeting the other requirements identified in Section 4.0 of Attachment D) achieve at or above the value for kW set forth below in the “Verified Gross Lifecycle Goals” column, and achieve at or above the values for both kWh and Therms set forth below in the “90% Threshold” column, and achieve at or above the value for MMBtus set forth below in the “Total” portion of the “MMBtus” column (i.e., 262,618,907 MMBtus).

Unit	Verified Gross Lifecycle Goals	MMBtus	90% Threshold
kW	413,122	N/A	N/A
kWh	30,426,797,117	103,816,232	27,384,117,405 kWh
Therms	1,588,026,749	158,802,675	1,429,224,074 Therms

TOTAL		262,618,907	
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- 2.1 The above goals are based on the annual budget allocations for the Focus on Energy “Core Program Administration” and “Core Program Implementation” for the program years 2015 through 2018 (which in the aggregate equal \$368,000,000), as described in Table 1 of Attachment D. Should the Focus on Energy budget be reduced (or increased) by the legislature, the Commission will revisit its decisions on goals and determine whether any of the goals in Sections 1.0 and/or 2.0 above should be adjusted accordingly.

- 2.2 If circumstances beyond the control of the Program Administrator, the Contract Administrator and the Commission occur that could reasonably be expected to affect the ability of the Program Administrator to achieve these goals (either by making it significantly more difficult or significantly easier to achieve these goals), the Program Administrator, the Contract Administrator and the Commission shall have the right to propose change(s) to these goals to reflect the entirety of the then-current circumstances. The other parties agree to discuss and consider any such proposals in good faith, but they are not under any obligation to agree to such proposals.

- 3.0 Assumptions: The goals set forth above are based on technology and/or end-use energy savings assumptions, as documented in program workpapers, SPECTRUM, and the Focus on Energy Technical Reference Manual (TRM). Any modifications to existing savings assumptions, and any proposals to calculate savings for new measures, that may be proposed by Implementers shall be reviewed by the Program Administrator and the Evaluator; such proposals shall not become effective unless and until they have been reviewed and approved by the Commission. All approved changes to any values shall be made on a prospective basis only, and shall not be applied retroactively for the purposes of determining savings or cost-effectiveness. At the end of the 2015-2018 contract period, the Program Administrator’s final contract goal achievement will be determined by the Evaluator, based on verified gross lifecycle savings.

- 4.0 Net energy savings: Net energy savings, as verified by the Evaluator, and Focus on Energy Program costs, as verified by the Fiscal Agent, will be used to determine contractual cost-effectiveness achievement at the Program and portfolio levels for the 2015-2018 contract period and for each program year within that period. The entire Focus on Energy portfolio must pass the modified Total Resource Cost test, as specified in docket 5-FE-100.